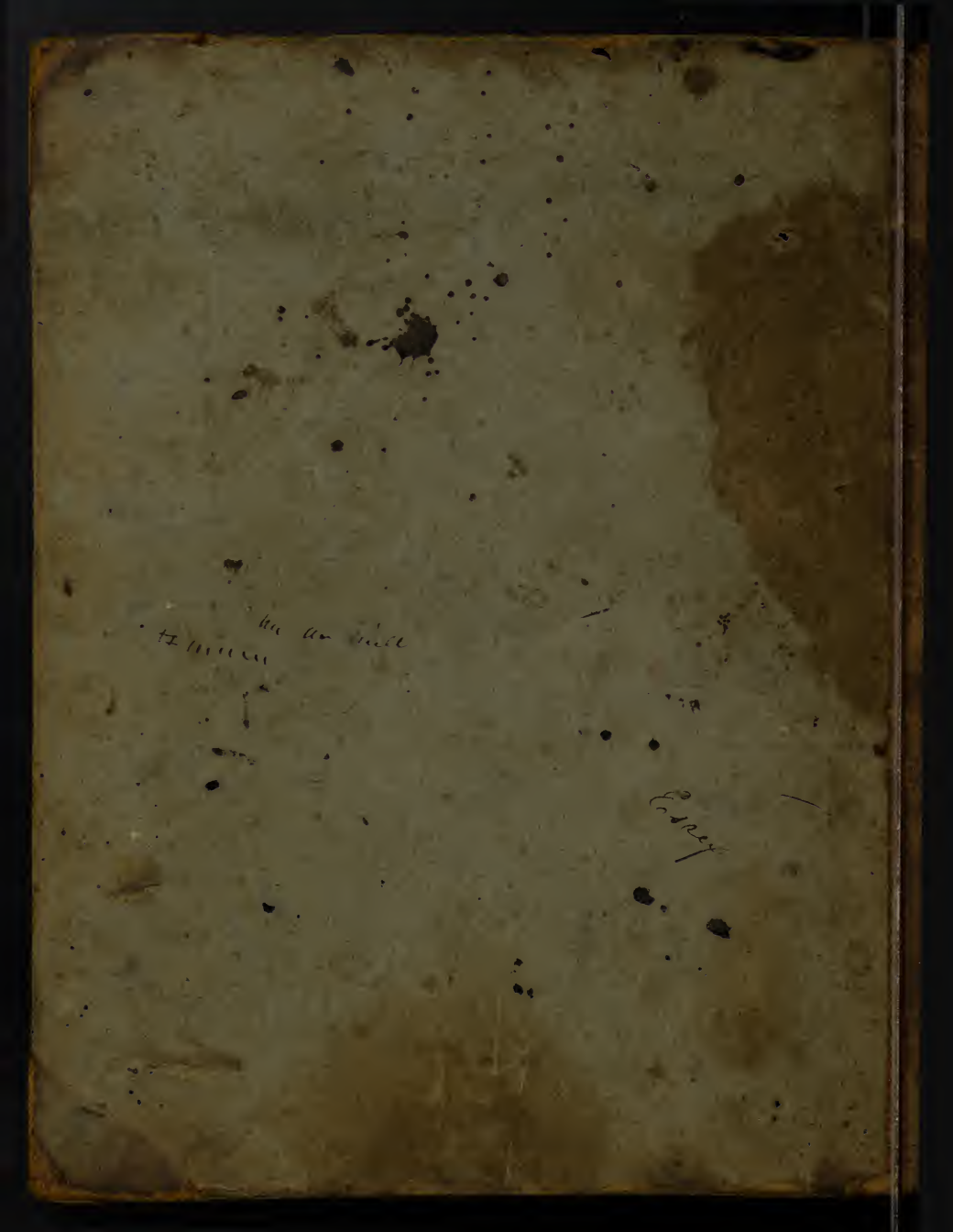

Lemon Sherrill's Notes

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Against whom Waste

If the inheritance may have this action against his fellow for waste committed on the estate tho there is no lease. The Equity of the St. extends to joint tenants but not to coparceners for they might compel partition at C. L. Co Lit 170 b 2 Mod 1 2 Vin. 227. 83 B. 227. 2 Ld 194 2 Inst. 403.

He who has the inheritance may join in this action one who has a smaller interest. Ex husband & wife when the rev. is to them & the heirs of the husband the wife may join with the husband. 1 Roll 825 1 Inst 53 Co Lit 170 b 2.

Lessee for years commit waste & his term expires before action brought yet Lessor may have an action of waste for damages tho he cannot recover the place wasted. 5 Co 4 68 1 Inst 283 2 Ld 300 5 Co 119 Co Lit 53

He cannot maintain this action unless he has the same estate continuing in him which he was when the waste was committed. Ex Reversioner in fee after waste committed grants the reversion to another & then takes back the same estate - the action is gone for his right of action is devested by the grant & the re-purchase does not revest it - the priority of estate is devested. 5 Co 4 68 1 Inst 53 356 2 Roll 825 Co Lit 170 b 3

At C. L. grantee of a reversion in fee could not maintain this action the non commission of waste being a condition to which he is neither party or privy - tho by 32 H. 8 he may after notice of the grant given. 2 Co 150 5 Co 168 1 Inst 215 Mod 876 Co Lit 145

Against whom it lies

At C. L. waste lay against guardian in chivalry tenant in

in dower & tenant by the curtesy only. 2 Bl 282 2 Inst 145 299 2 Bl 224 1 Bos 121 Cont to C 1-4

Cur to tenant by curtesy opinions are contradictory 5 Ba 469 1 Inst 54 F.N.B 60 but by the better opinion he was liable - But Lessee for life or years cannot 2 Bl 283 5 Co 13 2 Inst 299 5 Ba 416 Cont to. C 14. qu. 1 Reeve 386 2 Rol 83 2 Co ~~Inst~~ 83 nor Lessee for life / tenant by curtesy tho' were liable in Ct. Root 244

The reason of the diversity at C.L. between guardians & lessee for life &c was that the estate of the former being created by law gave the remedy against them but as the estate of the latter was created by the owner of the inheritance he might have provided against waste - But by 52. H 8 & 6 Ed 1 the action is extended against all tenants for life or years - against him who holds by law of Eng or sues for term of life or years. 2 Bl 283 5 Ba 459 2 East 28 Cont to C 1-4

It lies therefore since the Sts. against devisees for life or years - so also against assignee of lessee for life &c for waste done after assignment. The action in this case cannot be supported against the original tenant for life &c. for the action must be against him who committed or suffered the waste - besides the privity of estate is gone as between Lessor & lessee. 2 Rol 82 b 5 Ba 476 Cont to C 4 1 Inst 54. Cro E 683 2 Inst 302

But if tenant in dower or by curtesy assign & assignee commit waste action lies for the heir against the tenant in dower &c. for they were liable for waste at C.L. - against an assignee it may of necessity against them even after they have assigned & their liability at C.L. is not removed by the Sts. Sedna - Indeed the heir in the first case cannot the assignee at C.L. for he is not tenant in dower &c -

If a husband commit waste upon the wife's freehold the remedy is a suspension of the action - but a court of Chancery will stay such waste by injunction on behalf of the wife 2 Mont 111 -

If the assignee or creditor of the husb. takes possn. of the estate on a sale on exn. of his freehold without consent waste the wife has her action against him in which the husb. must join - 2 Mont 111. 1 Greenleaf R. 6.

So the heir of the wife may sue the husb. for waste but for want of privity he cannot sustain waste against an assignee of the husb. - 13 Johns 240 2 Mont 111

A tenant for life or years where the tenancy is created by the act of the landlord is without impeachment of waste unless restrained by the lease - 8 Ct 483

the requisite privity is wanted. 5 Ba 472 2 Inst 300 Com to Ex 4
1 Inst 54

But if tenant by curtesy &c assign & assignee commit waste & the heir grants away his reversion the grantee of the reversion can sue the assignee in waste & heir only for there is privity of estate between them & tenant by curtesy &c can hold as much of the heir only. 5 Ba 472 1 Inst 54 3 15 P 301 3 Co 23 B.N.P. 55

The action lies against an occupant common or special &c also against an Ex. &c who takes a term as ofets & against an Ex. &c in tort for waste committed by themselves. 1 Inst 54 P 301 Com to Ex 3 Atto 93.

If tenant for life &c commit waste & then assign he remains liable. 2 Inst 302 2 Roll 829 Com to Ex

If waste is committed by a stranger on lands in poss. of tenant for life or years the tenant is liable to the action. So of tenant in dower &c tho the tenant has trespass against the stranger. But the stranger cannot be guilty of waste & lessor not being in poss. cannot maintain trespass. / tho he may sue in case. Sand. 5 Ba 474 B.N.P. 60 2 Inst 145 P 54 Com to Ex 2 Roll 821 3 Lev 209. / & the rule is the same tho the tenant be an int. of freehold. 5 Ba 474 1 Inst 54 2 Roll 821

If tenant for life &c having committed waste dies his ex. &c is not liable in this action. So of tenant in dower &c. Tho lessee for years tho the term was to the ex. &c it being a tort. Com Dig 5
2 Roll 828 5 Co 475 Bent 127 2 Inst 302. contra. Sacond 239

Waste

It lies not against tenant in tail after impeachment of issue against his estate being in its creation an inheritance is not within the St. the punishment lies not against lessee at will for the commission of waste determines the estate besides it is not within the St. — Neither does it lie against tenant per legal "without impeachment &c" for he is admitted by deed not against his lessee. 2 Rol 125 283 1 Inst 2 54 2 Co 202 2 Roll 820 Com to 65 5 Co 13 Co 8 77 84 Fri. 51

Recovery

The punishment for waste at C.L. & by St 32 H 8 was only single damages. 2 Rol 283 2 Inst 146

But now by 8 Eli. 3 the tenant forfeits treble damages & the place in which &c. Since this St. the action is in Eng. a mixed action both realty & personalty are recovered. 2 Rol 283 2 Inst. 303 5 Ba 487 Com to 62.

If land demised to 3 ones & waste is committed on one only that one is recovered. 5 Ba 487 2 Rol 284.

Only the particular parts in which waste is committed is recoverable if they are easily separable from the other as in a particular close — Secus if committed generally as in a whole field. 5 Ba 487 2 Inst 305 2 Rol 284 -

If committed in several rooms in a house the house is recovered — Secus perhaps if in one only which is easily separable from the rest — 2 Rol 284 2 Inst 304 Co 54

In Ch. only single damages have been recovered & not the

please consider — qu. Is not the St. Gloucester law in Ct.?

1 Co. St. Ct. 147 240 if tenant in dower suffers waste in houses buildings &c or suffer fences to decay Chancr may on application by the heir deliver so much of the dower estate to him & for so long a term as may suff. in their judgt. to enable him to make the necessary repairs out of the rents & profits unlesp tenant in dower will give good security for leaving the estate in suff. repair

In an action of waste on the St. Gloucester against tenant for years for converting three acres of meadow into garden ground the jury gave one farthing damages, for which alone the Ptff was allowed to enter upon judgt — for Hemingway & Bosa 86 the Governors of Meadow school vs Meadow — on the principle of de minimis non curat lex — 3 Saunds 251 n 6.

[illegible] — it calls for the same reading the [illegible] 1204 —

The Law Merchant has been denominated a particular custom but this is incorrect for it is not confined to local limits neither is it necessary to plead it specially & except in new cases in which the Law is doubtful it is not provable by witnesses or triable by Jury - In such it is said evidence evidence of the custom may be received. 2 Burr 1218 1669 B & P 298 4 B & P 308 B & P 360 Doug 2. 8 553 Chitt. B 28 109. 28

Formerly it was confined in its operation to merchants in the case of inland bills of exchange but now it is confined to no particular class of men. It merely governs particular transactions among all classes throughout the realm - It is then a branch of the C L. Chitt 13.19 3 B & P 436 2 Ld 459 by Pyl L K B 1 B 2 Kent 295 310 Lord 4 B 152 Salto 1285 -

Bills of Exchange

These are open letters of request addressed from one person to another desiring him to pay a sum of money to another or to any other to whom that third person shall order it to be paid - or to the bearer - Ryan 3 2 B & P 465 Chitt. 37

It may be drawn thus payable to bearer - to the order of he - to be or bearer - or to bearer generally - Willes 190 2 B & P 467 Burr 1517 27 Chitt 4 B 107

The person who draws the bill is called the drawer - he to whom it is addressed the drawee or if he undertakes to pay it the acceptor - the person to whom it is payable whether specially named or not is called the payee & if he appoints another to receive the money he is called the indorsee & any one who has the bill is called for the time being the holder. Ryd 4 -

2 Bl 467 1 Ch 1586 602 Cheitt. 13. 22. It is an assignment to pledge of a debt due from debtor to the debtor. 1 Ch Bl 602 Ch 13.

Equity from a common debtor to a debtor holding negotiable or negotiable instrument is one in which the legal or well or equitable interest may be assigned to a third person not originally a party to it - the debt or duty remains by it is assignable at law so that the assignee may sue him on an action at law when it in his own name 7 Ch 243 4 Ch 542 5 683 3 182 1 Ch Bl 602 Ch 1.46 107 Bl Ch 1272

This is drawn to the rule of E S in relation to choses in action generally - the gen. rule being that a chose in action cannot be assigned - leaning to litigation & maintenance / Cheitt 2.3 108 1 Burr 266 237 2 Roll 46 Ch 211 2 Bl 442 1 Ch 96 621 1 Ch Bl 605 8 4 Ch 341 / Choses in action what? 2 Bl 395 1147

The meaning of the rule is that the legal interest in the debt vested or selected by the instrument cannot be transferred so that an assignee cannot maintain an action at law when it in his own name but must sue in the original creditor name - 2 Bl 442 Ch 5.6 108

Hence obligee debtor may at law it is said release the debt after assignment & notice to obligor - but the proper course seems to be to set aside the plea. Ch 6 4 Ch 663 1 Bar 442 - Ernstan 1 Johns 411 nice. 1 John 531 3 425 -

The E S rule has prevailed in Eng. as well with respect to promissory notes as to bonds covenants &c till lately - Now 1811 by St. notes for $35 or more payable to order or bearer are negotiable -

Purchasing a chose in action was formerly holden to amount to maintenance Hob. 90 2 Roll 45 Cheth. 3 The rule is now diff.
2 Vs 442 Ch 5

Courts of Eq. have always protected the the assignmt. of chose in action for valuable consideration so that if assignor releases after assignmt. the debtor may still be compelled in Chancery to pay the assignee - 1 Ves 154 2 Vs 442 Ch 4 3 P.Co 190 1 Ves 411 2 Vern 428. 50 595 Cop 2 3 Chan R. 90 Ch 232 -

Tho Courts have determined that actions at Law for forced lie in the last case in favor of assignee against the original debtor if the latter credited the release after notice of the assignmt. & if the assignor is unable to pay - suppose the assignor is able to pay is not the original debtor liable at Law?

Also decided that a promise by the obligor & in consideration of forbearance to pay the assigned debt to the assignee is binding notwithstanding a release by obligee 1 Root 108

And in Eng as well as in U.S. the contract of assignmt. is now good at Law as between the parties it & is construed into an implied cont. that assignee shall have the benefit of the debt & may use assignor's name in a suit to recover it. & such assignmt. is a suffic. consideration for a promise by the assignee - 2 Vs 442 Ford 124 Ch 5 109 1 Doug 317 2 Vern 540 2 P.Co 608 1 Atkins 113 1 Roll 29 Ved 212 7 Johns 222 Vs 12 820

If assignor receives the money or releases the debt he is liable in cont. when & when the assignmt. is by dec - the chose in action may be assigned without deed Dr 12 688 1243 3 Ves 304 4 Vs 12 390

Lex Mercatoria

In Eq. the action is usually case -

The equitable interest of an assignee in a chose in action has for several centuries been recognized in courts of Equity & L 5

As the assignor of a bond having become bankrupt a suit where it may be maintained in his name for the benefit of the assignee - Cha 5 1 Vk 616

So in consideration on a bond given to Pff. in trust for a debt due from the maker may be set off. Cha 5 1 Vk 321 4 Ch 430 Eq 222 Eng 7 Vk 663 Eq 108 Ca Cha 5 2 Vent 309 2 Show 500

The negotiability of foreign bills of Exchange was recognized in Eng. in the 14th century - that of inland bills in the 1st Ch 7 - If a bill drawn in any part of U.S. on any part of U.S. is an inland bill 6 Mass R 375

Generally in actions on simple contracts Pff must prove a sufficient consideration - Even in actions on deeds the Q. Eq 97 Brown 1639 Eq 71 Show 320 7 Vk 331 But in actions on bills of Exchange it is in gen. not necessary for Pff to know that he gave a consideration for it - the consideration is in gen. implied in case of deeds & in this respect they resemble specialties. Eq 48 2 Bl 1145 Dr 1758 Bl R 1187 3 Ved 70 Cha Q. 31 115 85.

Receiving. where the holder claims as bona of the bill transferable by delivery (not as original payee) & under suspicious circumstances - Eq. If it happens lost by payee - in such case Pff must prove that he or some intermediate person took it bona fide & for a valuable consideration - But where the holder is named as payee or indorsee the writing imports a consideration

It was decided that the voters who received after the date

A. & B. purchase of A. lands to the amt. of $100. for which he receives their negotiable note payable to himself & indorses it to C. after it was over due - in an action by C. vs A & B. upon the note these facts were held to constitute no defense wherein is founded Ct. Ry.

is meant as fence or indorse the writing imports a mandate

Ch. q. 51 20T 209 Burr 1516 23 2 How 235 Bagley 116

If in settling an account for goods sold & the purchaser gives a bill of Exch. for the amount which he fails to pay & an action is brot on the original consideration of the bill he cannot impeach the charge in the account the bill being conclusive of the sum due & Defdt. in qui. is in no case permitted to prove that he received no consideration for the bill except when the action is brot by the person with whom he was immediately concerned in the negotiation of it - but between indorser & indorsee - & here no bona fide purchaser intervene is in question / Ch 51 B. R 445 12 Ep R 117 2 H & 1 Str 674 Rgd 2 vb / qu. whether want of consideration may be averred even between parties in immediate privity. 1 Ep. C. 119 n 2 Caines 246 vid Evans C 18. 8. 2

Exception - When one takes a bill by transfer or indorsmt. after it is due - here any party who is sued is in gen. permitted to shew by way of defence that he received no consideration for it or any other equitable defence of which the holder was aware at the time of transfer. Ch 52 113 Rgd 283 —

A transfer after a bill is due affords a ground for suspicion & hence it is left to the Jury on the slightest circumstances to presume that the holder was acquainted with the facts which render the transfer unfair - therefore if it is proved for non-payment or if it can be otherwise proved that the holder knew of its being dishonoured he is considered as having taken it at the credit of the person from whom he received it & the above defence will succeed. 3 H & 83 7 423 Ch 113 —

It has been said that the holder who receives it after it is due

A note payable on demand indorsed 5 Months after date. several payments were indorsed before its transfer. Maker not allowed to show equities on the ground that it was a business transaction the parties agreed all was right at the time the payments were indorsed 14 Johns 224

A promissory note made the 3 Sept. 1817 on demand & indorsed on the 25th May 1818 is now due & subject to all equities as therein. 4 Townsend 6 Ct. 5. no demand not made until 8 Months after date 14 Mass 151 4 do 370 3 Caines 372 7 Johns 70 9 do 244 1 Cowen 397 – Seven days not an unreasonable time to demand payment of a note on demand 6 Wells 428

is liable of course to all the equity to which it was liable between the former parties & without presuming notice on his part - 7 B R 423 3 Bos 283 Bos 283 Ch 114 qu. Ch 114 Doil 230 2 B R 170

Foreign bills of exchange are those which are drawn in one country or sovereign state & payable in another - Inland are those which are payable in the country where drawn Ryd 10 2 Show 486 1 Mod 29 3 Bos 85 Dana 485 Ch 12.

Bankers Checks or drafts on a banker are in form like bills of Exch - but are always made payable to bearer. / Ch 16. 171 7 B R 423 / They are negotiable like bills of Exch - being formerly - They are not payable till demanded in which they differ from bills of Exch payable on a particular day Ch 16 14 171 Burr 1517 7 B R 423 -

They may be declared on as bills of Exch. tho' could not be protestable - see ante / Ch 16 171 et seq / They are received & treated as cash & if they are not demanded within a reasonable time & the banker fails the holder loses the bill Ch 166 71 7 B R 423 L R 7 744 Doug 485 Ryd 41 1 B & P 1 -

What is a reasonable time was formerly a question of fact for the Jury to decide - but now the facts being given it is a question of Law for the Court to determine - Ryd 41 1 B & P 1 Hur 415 330 910 1248 175 Beames 482

It has long been settled that all persons in gen. having understanding & legal capacity to contract may be parties to a bill - so may corporations by their agent - / Ch 19 Ewells 130 282 21 ent 292 Comb 152 1 Show 125 12 Mod 36 380 Ld 135

Lex Mercatoria

10th 181 Term 12 13 11 Ill 1729 Sec 85 Formerly equal as between merchants as one negotiable trade Salk 130 1385 Ch 19 - The act of drawing a bill constitutes the drawer a merch.t within the custom - Selw 319 Carth 82

If a bill is drawn indorsed or accepted by a person legally incapable of binding himself it will still be good as to all others who are parties to it & able to bind themselves. If drawn by a feme covert & indorsed by a person minor - the indorser is bound Ch 21 2 Carth 181 Pothe 29

The usual parties to a bill are generally the drawer - drawee & payee - tho' indorsers or transferees others may be made parties. Ch 22 - Wyd 2.3 ays 4 - interest

Not necessary there should be three - for frequently there can but two parties - Eg. he draws a bill upon himself payable to his own order - this however is in the nature of a promissory note when indorsed over - but is deemed in law a bill of exchange Chit. 22 Carth 509 1 Show 103 Burr 1677 West 281 Selw 318 Bullod 30

A person not originally a party may become one by negotiation of the bill - by his accepting the bill for the honor of the drawer or any indorser - then - if drawee refuses to accept any one may offer protest & pay for the honor of the drawer &c - this is called mediatione supra protest Ch 23 103 80 Beaw. 33 456 Ryd 158 Carth 129 Salk 896 Selw 318 / for non payment / & refusal a stranger may make himself a party by paying the bill for the honor of the drawer or indorser - payment supra protest 1 Esp R 112 supra

A person may become drawer indorser or acceptor not only by his own immediate act but by that of his agent or partner - in such case he is said to become by procuration. Cb 23 9 Co 75 Ld Ke 930 6 Mod 6 12 Mod 346 5 Bl 564 Bacon 83 - Ind Selw 321 1 Ins 52

The act of the agent being merely ministerial - infants feme covert outlaws & others incapable of acting for themselves may be agents for this purpose. Cb 24 1 Ins 52 & Selw 321 n 2

An agent may be constituted for this purpose by parol. Cb 24 Bacon 86 12 Mod 564 Selw 321 n 3

An agent acting under a gen. authority may bind his principal to any extent - but one appointed for a special purpose & acting of course under a special authority can bind his principal only to the extent to which his authority extends Cb 24 3 Wils 75 Ld 591 1 Esp R 111 Sel. ca 17 2 M & W 118 P 155

A person signing his name on a blank piece of paper & delivering it to another authorises the latter to fill it up with any sum on stamped paper without any sum the stamp will warrant - Bacon clerk - Cb 25 5 b Doug 496 514 1 M & W 313 Ryd 110 Shep 54 Peake 118 4 Esp 26

As to authorities implied & authorities reluctantly assented by agent see Chit 27 9 Co 75 1 Roll 330 Ld Ke 930 Cowp 450 3 Wils 75 2 M & W 618 Peake 42

An agent cannot delegate his authority to another unless expressly authorised. Cb 27 9 Co 75 1 Roll 330

Lex Mercatoria

In drawing indorsing or accepting for a principal the agent must act the act in the principal's name or the agent is bound & not the principal. Ch 27 56 75 Co 75 Stra 715 955 6 Mod 175 Ld Raym 181 Raym 46 13 Eaw 83 Selw 321 Ind 5 East 148 contra Hard 4

One of two joint partners may by acceptance bind both if the bill concern their trade Ch 27 112 200 Sel 125 192 Ld Ray 175 14 84 7 Mod 207 12 Mod 354 2 Burr 277 92 Peak C 16 / Semble if it concern only his own separate interest - Sel 125 Ld Ray Ind Selw 322 Peake C 80 7 East 210 2 Esp C 524 731 2 Ch Ches 300 2 Bacon 246

It seems that the act of one in the name of both or of the firm will bind both tho per his sole benefit if the holder acts bona fide Ch 28 Peake C 80 2 Burr 277 92 Esp 524 vid et rep. Selw 322 et sequitur -

Resolved that two persons by making a bill payable to their order make themselves partners to that transaction so that one may indorse for both - L. Mansfield in such case admitted the testimony of all clerks that the indorsement was by usage invalid because not signed by both - Note in this case the indorsmt. was not in the name of both Ch 29 Wils 253 Doug. 653 Peak. C 16 -

If a bill is drawn by a Corporation acceptance by one of its members does not bind the corporation. Ch 29.

When one partner draws for himself & partner he should do it as for himself & partner & in the name of the firm - Semble it is doubtful whether the other would be bound - Ch 30 56 75

doubtful whether the other mouth be bound. CH 30 50 73

Ind 126 Dr R 14 84 176 Doug 653

In Ct. the partner of the promissor has been holden liable the note being made for a company concern

Forms

No particular form or set of words is necessary to the creation of a bill of Exch. or check. Ex. I promise to account to Ld or his order for $50 this is construed as a promise to pay & a good bill. Ch 21 58 10 Mod 287 8 Ve 364 3 Lev 213 Dr R 1397 Stra 629 1 Esp C 129 Keyes 60.

But it must possess certain essential qualities or it will not operate as an instrument. but as mere evidence of a special contract & without these requisites it will not carry with it internal evidence of a consideration. nor be negotiable & hence will not be a bill of Exchange. Ch 173 84 92 Dr R 1545 2 Ld 259 360 3 Lev 213 2 Bl R 1072 5 T R 485 7 Ve 242 1 Ch R 239. 10

Requisites

The instrument must be payable at all events - it must be for money only & not for collateral articles or for the payment of money or performance of any other act. Ch 32 Keyes 50 3 Lev 213 Bl R 1072 5 T R 485 7 Ve 241 1 Ch R 239 4 Mod 242 Stra 1151 1271 Cowp 227 Bull 272 Esp 23. 1 Burr 323. 2 Stra 1151

1. It must not be payable on contingency for that would perplex commercial transactions by interrupting the credit of the instrument as if it is made payable on a certain event which may never happen it is not negotiable. Ex. On Ld marriage to Ld of Chit 32 5 T R 485 3 Lev 213 1 Burr 325 Keyes 36 Stra 1151 / payable out of a particular fund which may

not be productive it is not negotiable neither can it be made so for it must import a personal credit to the drawer. Shep. 348 L. K. 1362 96 1553 Comb 227 4 Mod 242 10 204 13 K. 242 4 343 Bott. 281 1 K. 782 Stra 592 1211 8 Mod 265 1 Ves Sr. 280 Selw. 325 3 Wils 207 Stra 752 10 Mod 316 11 384. 410 Cowp 24

It seems however that such an instrument is considered & may be declared on as a bill between the original parties & this appears to be established Ch 33 48 7 K. 243 Sr. 485 Sr 123 - Sel. Ca. 18 Ryd 65 / Contra that they are only Evidence of a between the original parties. Ryd. 58 Bay 8. 3 Wils 211 1 K. 1072

Exceptions - When the event on which &c. is of notoriety morally certain & respects trade Ex Payable two months after such a ship is paid off. Ch 33 Stra 24 1 Wils 262 Bull 272 Ryd. 57

If the event on which &c is one which must inevitably happen at some future time the bill being for money only it is otherwise good - Ex 40 pay in one month after the death. Ch 33 Stra 1217 1 Burr 226 Ryd 57

The mention of a particular fund only by way of direction to drawee how to reimburse himself will not vitiate the bill - for it imports a personal credit to drawee. Ex $110 of my half pay to be due on such a day in advance. Ch 34 Stra 752 Sr. K. 1481 1 Burr 12 Doug 571 Ryd 34

So of words inserted for the purpose of pointing out the consideration of acceptance - Ex Value received out of my estate in G. Ch 34 L. K. 1545 7 K. 733 Sel. ca 39

[illegible] spring is known it is to be found that it is said

If a note is payable to A or B. it is not negotiable 4 Maund 576
2 Burr. 1. Ald. 147 But if it purport to be for value rec^d^ nothing it
states according to its terms is a suff^t^ statement of consid^n^ to entitle
the holder to recover as on a contract 4 Maund 576

Requisites.

1. They must be for the payment of money only - hence an order payable in goods is no bill - for these instruments were devised & adopted for the purpose of facilitating remittances not as a medium of barter - besides if orders for goods were negotiable they would perplex commerce by the means afforded of deceiving the parties bound as by transferring to a distant indorsee Ryd 50 Ch 34

They must not only be payable in money but in money only - for the same reasons - hence a bill for money & goods or for money & some act to be done is no bill of Exchange. Salk 33 Ryd 50 Str 1271 Note payable in Bank Ill. bills is negotiable Selwin R. 126. 217.

But any order which cannot in any point be complied with but by payment of money is for money only. Ryd 60 10 Mod 287

It is not to be contended that these instruments when deficient in any of the foregoing requisites are of no force - They are not bills of Exchange but may be used as evidence of a contract between the original parties &c. If the contingency has happened - if the fund out of which it has been productive they may be declared on as bills between the original parties. Ryd 58 Salk 1272.

The addition of any thing merely extraneous will not vitiate the bill - by mentioning the reason for drawing a bill &c Ryd 61 Str 710

In case of foreign bills it is usual to make three of the same tenor that if one is lost the money may be received on the other - But in such case to prevent the payment of the money more than once each part should refer to the other & be readable on condition that neither of the others are paid. Salk 46 Bayl. 15

The bill should specify to whom it is to be paid - that is said

that if the bill does not designate any payee by name or otherwise but mentions of whom the value is received it is to be construed as a bill payable to him. Ch 46 Poth. N 41 qu. 1 H Bl 608.

If a bill is payable to a fictitious payee or order it seems settled that it is in legal effect payable to bearer - as against such parties who knew such payee to be fictitious but against no others. Ch 47 bl 109 202 3 Wil 4 481 1 H Bl 313 8 b 509 Q 2 Ch 494 298 Ryd 208.

Such bills have been highly countenanced & it is said that the person endorsing the fictitious name would be guilty of forgery. Ch 48 Ryd 210 ut supra.

A bill payable to one for the use of another is valid. Ch 48 112 Carth 5 2 Redd 307 Skin. 264 6 Mod 123 - Ryd 108 1 H Bl 313

Words of transfer

A bill to be negotiable must contain certain operative words of transfer as to A or order & hence a bill payable to the order of A has the same operation as one payable to A or his order. Ryd 36 65 108 Ch 48 108 Beav. 3 3 Wils 211 Str 212 2 Wils 353 Carth 403 2 Show 6 - Esp 26 & good without the word "bearer or order" in Ch. 8 Barn. R 137. 1 Esp 233 acc.

The word "value received" are not necessary in a bill or endorsmt. a valuable consideration is presumed. Ch 50 2 Show 476 Bay 1 Ld Raym 1 Mod 319 3 Wils 212 Ford. 282 8 Mod 267 P 319 R 345 1 Barn. 88 P R 1481 3 Wils 212 Ryd 31. 2 Str 1212 Skin. 346. Helm. 337. Esp 24. 26. 27.

But to entitle the holder to interest & damages against the drawer or indorser in default of acceptance or payment these words are necessary by 17 & 18 Vic 3 & 4 Lam. Ch 50 93 Ryd 91 Str 910

Transfer.

If the payee of a note endorse it to a trustee for the benefit of his relation the note will be considered in the same light in an action by the trustee as if the original parties were before the C. / 3 Barn & Ald 213 / 4 - Considered inquirable into —

Deft being the payee of a negotiable note endorsed "For value Rec'd I sell assign & guaranty the payment of the within note to J. A. or bearer" held an absolute engagement that makes obl. pay the note when due or on that default to pay it himself. Pft not bound to give dem. or notice 3 T Johns 365 17 do 326 13 Mass 14

The indorsement of a note is presumed to be contemporaneous with the making or before it falls due & if maker wishes to avail himself of payment on the payee he must show it to have been made before transfer 4 Mass 600 5 Mass 324 3 Day 311 27 E L 231

4 Mass 148
6 Cranch 288
1 Bloom 4
6 Mass 124
1 Bloom 264
" " 706
Dong 637

— Lottery ticket sold after drawing of the lottery authorizing it to be set in the name of him who owns it at the time of drawing. S. C. Feb 1817 Clark v Minor

The holder of an accommodation bill will not be charged of a recovery unless he received it under circumstances evincing gross negligence 27 E L 234

In an action on a bill or partial failure cannot be offered to reduce the damages if the amount to be deducted is of unliquidated damages & the contract has not been repudiated 12 Ct 234

"I warrant warrant the within note for value in A.B" is a guaranty & no one except him to whom it is made can sustain an suit upon it. a more special contract not negotiable as the note may be on which it is made 5 Mand 308

Nor can the holder of a bill or note transferred after the discharge of the maker under the insolvent law sustain an action upon it on proving a new promise to the payee before the transfer. for the new promise is a new contract & the old note is merely evidence of an original 3 Mand 135 2 Esp 736 5 Mas 509 Doug 172 Cowp 544 4 Mand 420

Lex Mercatoria

Consideration

The cases in which the holder may be obliged to prove a consideration paid or Defendant permitted to aver the want of it have been considered

If the bill is for accommodation only & that fact is known to the indorsee he can recover no more than he paid for it tho less than the amount of the bill. Eq. Interference for the accommodation of the drawee. Ch 51 1 Esp R 281 Peak R 61. 216 2 Ch Cas 248 and 1 Esp R 118. 7 John R 361 10. 224

But where a bill is drawn for money actually due from drawer to drawee or in the regular course of business the income tho has not given the full value or amount of the bill may recover the whole & hold the surplus for the use of the indorser It is then considered as the assignment of a debt due from drawee to drawer. Ch 52 1 Esp R 281

In all cases in which Defendant may aver the want of consideration he may aver that it was illegal. Ch 52 B & R 445

4 John R 294. § 26

Between those parties who are immediately concerned in the illegal transaction the illegality of the consideration is a good defence but third person knowing the consideration to have been illegal at the time of taking it cannot recover upon it. Ch 52 1 Esp R 116 6 T R 61. contra 1 Esp R 6 Sunk. The holder of a bill sued as in prima facie to be deemed the rightful owner of it & need not prove a consideration unless a suspicious circumstance. 8 John R. 259

It has been holden that a third person who having put his name upon the bill at the request of the holder has been compelled to pay it to a bona fide holder may recover upon it tho he knew the consideration to be illegal. Ch 52 Peak 215

847 **Consideration** — Lex Mercatoria

In ord. any holder of a bill upon fair consider. & having no knowledge of the illegality of the original consider. may recover upon it tho' it be void between the original parties except where it is endorsed after it is due when he is liable to the same equities as the endorser. Ch 53 Sal. Sel. Cas 71 Byd 280. 8 (Doug 614. 3b 1 Bl 300 8 390 9 607 8 464 537 803 Stra 1155 1 Bl. R 445 — 1 Atkins 169 3 Comm 279 x 1 Atkins 651. 831. 8 29 1 Atkins 319. 8 118 2 300 8 454. 2 Comm 302. 303

Exceptions. In cases in which the H. Lords have declared a bill to be void an innocent indorsee cannot recover of the drawer or acceptor. Ch 53 Doug 64b 70 n 708 2 H Bl 647 Stra 1155 Cowp 35b 1 East 92 1 Esp 274

(Is not this the ground of distinction: that if the drawer be were liable the mischief intended to be prevented would be let in in the latter case & not in the former?) But in such case the indorser is liable for there is a new contract & the mischief not let in. Stra 1155 (Doug 713

Ch. 53 says that the innocent holder can recover only of the person of whom he immediately received the bill qu. Why not? & consider if a bill which is good in its creation is endorsed upon a mere consider. & then passed to a bona fide purchaser without notice he may recover of the drawer or acceptor tho not of the indorser. 1 East 92 Ch 53 1 Esp 273 Bayl 126 1 Saund 274 8 Bl 390.

Bills are sometimes made payable "per advice" in which case the drawee is not to pay till further advice received Ch 55 Potts 3b 169. (Is this ~~inconsistent~~ inconsistent with the rule that it must be payable at all events?

Considerⁿ

In an action by the indorsee of a note not void in its creation if indorsed before due the consideration cannot be enquired into 3 Bar 279

If a note has been fraudulently obtained & put into circulation in an action by the indorsee against the indorser the defendant may show the want of consideration 11 Johns R 231 D 85

That the note was indorsed for the accommodation of the maker & without consideration affords no defence 7 Johns 362

When the indorsee brings his action against the maker upon proof that the payee could not for any cause sustain an action upon it he must prove the consideration of the indorsement 22 E.L 80 1 Bar P 648

7 - an indorsee in a country where he could not be sued

It is no defense to an action on a bill given for fraudulent purchase money of articles, that the articles were forcibly retaken by the Pf. 2 months after the sale on that the person purchasing was in fact the owner 22 C.L. 87.

Terms if payable without "further notice" or if both clauses are omitted. Ch 55-

The drawer's name must be subscribed or inserted in the body of the instrument. & must be written by the person purporting to be the drawer or by some person authorised by him. Ch 55
Beawes 3 Bo & Pu 1376 1542 Stra 399 609 8 Atk 307
vid ep 28 to 29-

Construction

Bills of Exch - are liberally construed more so than deeds - Thus where one for money acknowledged in the instrument to have been borrowed & received gave a note with the words "which I promise never the pay" it was held that payee might recover upon the bill &c - Ch 3158
2 Ath 32

It is on this principle that a bill payable to a fictitious person or order operates as payable to bearer Lude 845

Generally the contract is construed & takes effect according to the laws of the country where made. Stra 733. Sel C. 144
1 Bos 142 2 Ves Jr 447 2 H Bl 603 Cowp 174 Burr 1077
1 H Bl 126 7 Bl 242 Strin 272 Ch 59 p 483 -

Exceptions as to time of payment - that usurious calculated according to the law of the country where payable -
Ch 59 Beaw 251 Hyd 8 Pothe 135 -

The form of the remedy is regulated by the law of the country where sued - but the effect of it is the law loci - Thus if one drew a bill in a country where he could not be sued

asserted upon it in a suit he cannot be holden to bail him so that the right of recovery is regulated by the lex loci contractus the mode of enforcing it (except as to extent of the remedy) by the law of the State in which the remedy is sought. Ch. bl 1 Bos 138

The bill is regulated to be delivered to the payee & a person receiving it in satisfaction of a former debt for which he hath no other security cannot recover due for the original debt before the bill is due - for receiving the bill amounts to an agreement to give credit till that time - Ch b2 12 Atk 517 B & K 52 Pa by 1 Ld Ray 5 Ub 3 B & K 513 Salk 442 Skin 410

If altered while in the hands of payee or other holder in a material point without drawer's consent he is discharged even against a bona fide holder - So if the indorser if altered after acceptance or indorsement without the party's consent - (Ch b2 4 B & K 320 b 367 2 H Bl 141 1 Lutw. 225 -) Semble for acts as subsequent bona fide holder Semb.) if altered before acceptance &c for it is then the instrument accepted &c & the holder has been in no fault. Ch b3 Bean 194 Mar. 138

But the consent of any party will stop him it seems from taking advantage of the alteration tho the party making the alteration without consent can in no case recover against any one Semb. Ch b2 2 B & K. 320 11 Co 27

The drawer by the act of drawing & delivering the bill impliedly engages to payee & every subsequent bona fide holder that drawee is legally capable of accepting - that he is

Lettre magnet.

that a donee is legally capable of accepting — that he is

to be found at the place described if any is described in the bill — that on due presentmt. he will accept in writing according to the tenor & that on due presentmt. for payment it will be paid when due. Ch 63 70 Ryd 109 Doug 55 2 H Bl 378 18 p 511 Stra 108 & 127.

Exceptions as to payee when he expressly agrees to assume all risks. So where the drawer discounts the bill & disposes of it to payee by way of sale. / Ch 63 180 Rand 110 3 Bl 757 18 p. R 447 7 Bl 65 Co. Ch. 1 120 & R 442 12 Mod 341 1 Bell 128 / Sedgw. as to the extent & meaning of this rule

If there is a failure in any of these implied engagmts. the drawer is immediately liable, tho the day of payment has not arrived for the amount of the bill & in some cases for damages interest & costs. 2 H Bl 379 Ryd 104 Doug 55 Beaw 469 Ch 64 100 136 Burr 1687 Bell 2 69 Burr 669 6 Bl 52 139 3 Wils 16 1 H Bl 634

The drawer is thus liable whether the bill was drawn on his own account or on another's. Ch 64 Beaw 469 Ryd 110

This obligation is irrevocable — Thus where a bill is drawn upon one in a foreign country who by the law of the country is prohibited from paying it the drawer is liable — But the holder may lose the benefit of these engagmts. by his own act or neglect — Ch 64 2 H Bl 378 Pott 55 Ryd — 69 66

Presentment for acceptance

This is in some cases necessary & in all expedient if the holder receives the bill before acceptance. Ch 66 Ryd 117.

Lex Mercatoria

Presentmt for acceptance.

When the bill is payable within a limited time after sight presentmt for acceptance is necessary - Semble if the time of payment will never arise Cole 67 202 Rgd 187 2 H Bl 565 - / But in either case it is not necessary to present it till it falls due - Cole 67 Beau - 260 13 R 712 Vann 2870 Mar - 46 Potte 143 2 Show 475 Ray 118 -

When it wants attorney be necessary the holder may excuse himself by proving that neither drawer or indorser had had any effects in drawees hands - or that drawee was insolvent which was known to the party said - or by any other fact which shews that the Deft - could not have been injured by the neglect of the holder. Cole 68 112 32 2 H Bl 336 Bing Tra Rgd 129. 36

The rule as to the time of presentation for acceptance where the bill is payable after sight - is that due diligence must be used by the holder - i.e. - to be presented within a reasonable time under the circumstances - Cole 69 Rgd 187 2 H Bl 569 Potte 143 7 R 425

So too Cole 68 says of bills payable at sight - not correct - the rule as to the time of payment of such bills relates to the time of presentmt for payment - hence presentmt for acceptance is unnecessary. Cole 67

What is a reasonable time is said to be a question of fact for the Jury / 2 H Bl 569 7 R 425 and - / But the facts being given it seems to be a question of law for the judge of certainty - thus whether there has been reasonable notice in any particular case is a mixed question. Cole 69 13 R 167 519 Baily 65 Cole 96 137 46 152 Rgd 61 127 Beaus 227 4 R 148 Doug 515 - Chain R 369 9 Johns 245 - 319

Presentation should always be made at the usual hours of business the neglect to present at a proper time is excused by illness &c - Cole 69 148 Marsh Rgd 125

me plaine by one parlour lindi lotte but if. till is dream on true not

[illegible] 148 Mar. 12 [illegible]

It is said the drawee ought to secure or accept immediately or on presentment. It is usual however to have the bill with him 24 hours that he may examine his account with the drawer unless he voluntarily accepts or refuses sooner & if he does not accept within that time the bill may be considered as dishonoured. Marsh Ch. 70 Dk 281 Beav 7 Ryd 12 / But it is said that this must ~~be done~~ not be done if the mail goes out in the meantime. Como Merch. Dk Ch. 70 Mar 62

If the drawee is not to be found & it appears that he never resided there or has absconded the bill is considered as dishonoured / Ch. 70 128 35 1 Esp. R 5 Dk & Ch 7 742 Merrill Beav 22.29 Ryd 125 /

But if he has only removed presentment should be made at the place & should if possible be to the drawee himself. Even if he has left the kingdom / or perhaps the state / the payee is not bound to follow him - presentment at the house is suff. Ch. 70 1 Esp. R 511 Stra 108 / Bayl. 58

If the drawee is dead presentment should be made to his personal representatives if to be found within a reasonable distance. Ch. 70 Potts 146 Ch. 132

Acceptance

Acceptance is the act of engaging to comply with the request in the bill & may be either in writing or by parol. Ch. 7.5 209

Acceptance by an agent is valid but the agent if required must produce his authority to the holder or the bill may be considered as dishonoured. It is doubtful whether the holder is always bound to acquiesce in an acceptance by an agent without affording the necessary proof. Ch. 23.1 Beav 85 Ryd 269

Acceptance by one partner binds both but if bill is drawn on two not

partners & acceptedly one only the other is not found & it may be considered as dishonoured. Cro 2 Ch 73 112 Bull 279 Brow 228 Holt 29 Salk 126

If the drawee is found to be an infant &c or otherwise incapable the bill may be considered as dishonoured. Cro 63

A promise to accept in future will operate as a present acceptance accordingly parol — his "leave the bill & I will accept it" &c — for it gives the bill credit & prevents a protest (Cro 73 Ball 270 Mer 1 Comp 573 Burr 1669 Lith 64 & East 544) so a promise to drawer to accept a bill drawn in future is binding if followed with any circumstance which might have induced a third person to take it. Eg — Letter to drawer "I will duly honor your bill" shewn to indorsee before he takes the bill Cro 73 Comb 571 1 Ed. 78 Rgd 74 81 Beard 454 66 1 Cth 715 711 Burr 1663

Acceptance after day of payment will bind the acceptor — the drawer or indorser must be discharged immediately upon being notified of non-acceptance or non-payment at the day — in such case the acceptor is liable to pay on demand. Cro 73 12 Mod 410 Ld Ra 364 574 Sal 129 Carth 213 Comb 76 76 Beard 224

Under the Eng. Bankrupt Laws the drawee the having effects in his hands of the drawer is not a reason for rejecting the bill after he knows of the drawer's failure — for he would be compellable to pay it over again to the assignees of the drawer. Cro 74 151 Poth 96 2 Hob Bl 334

If he accepts without notice he may safely pay the bill after notice & will not be liable to the assignees of the bankrupt. Cro 74 152 7 Mod 11

Acceptance may be absolute unconditional or partial but unless

It seems that a promise to accept a bill not in effect is not a legal acceptance — 10 Johns R. 207.

The holder of a bill cannot compel the acceptor to pay without producing & offering to deliver up the bill even tho he offers an indemnity. Ex Bill Lev't 14 Ch. 21

1. Note not payable at any particular place - if the drawer has a known place of residence within the State presentment must be made at that place to charge the indorser. But if the note is dated at Ca. & the maker has removed out of the State (& to Canada) presentment at Ca. is suff.t 14 Johns R. 114

the acceptance is absolute the holder may consider the bill as dishonoured Cb 74 103 180 Potts 47

If the holder is satisfied with a conditional acceptance or one varying in any way from the tenor of the bill it may be so accepted & if he gives due notice of it to the prior parties they are not discharged. Cb 74 82 Str 214 1152 1212 1194 648 Cowp 452 Potts 48 11 Mod 190 2 Wils 19 1 B & P 182 Rep 152

What amounts to an acceptance is a question of Law. Cb 75 1 B & P 182 186

An absolute acceptance is an engagement to pay the bill according to its tenor. Cb 75 Rep 74.

Acceptances are made almost universally — in writing the formerly they were verbal - the usual mode is by writing the word "accepted" & subscribing the drawee's name or by writing "accepted" only - or by writing the name only. Cb 73.5

× Holden that if a bill be payable in a city it must by the acceptance be made payable at a particular house or place there or it is protestable. Cb 75. Cowp 565 Ld Ken 74

Indeed any act of the drawee evincing his consent to comply with the drawer's request will amount to an acceptance e.g. "seen" - "presented &c" - any of the numerous abbreviations to a third person to pay it if written upon it or any other paper relating to it. Cb 75 Potts 45 Cowp 401 Bull 270 Rep 180

Writing is not necessary - for a mere verbal acceptance is binding Cb 75 Marr. 74 278 Str. 648 1000 Holt 297 1 Esp 18 Mar 17. 65 Rep 69

Burr 1669 74 Cowp 571 2 Doug 1 Ca at 103 4 T 77 / So the there is no consideration first in favor of the holder – As to the acceptance want of consideration may be shewn even tho in the acceptance is written Ch 77.82 Burr 1669 Bayl 44 / Cath. 717 / 1 B 121 4 Ca at 57. 5 Ba 514

It is said there is a distinction between a promise to accept in future on a consideration expected & one executory – the latter is said not to be binding while it remains executory unless it implies a wire one to take or retain the bill Bayl 49 Ch 77 / The promise intended in the rule is one to the drawee & not to

A promise to accept obtained by fraud or misrepresentation does not bind / Ch 77 Burr 1669 / Semb. in favor of the party practising the fraud. Semb as to a subsequent bona fide holder. Ch 82

An acceptance by letter is binding Ryo 69 Hare 548

Acceptance may be implied – but to constitute such an acceptance there must be some act or circumstance from which it may be inferred that the holder was induced to consider the bill as accepted – hence the words "there is your bill it is all right" is no acceptance unless it appears to have been intended to make the holder consider it as an acceptance – Ch 78 1 Esp 67 Bayl 148 contra Hawes 75 Hand 278 Ba 1 B 1 2 69

Acceptance may be implied if the drawee keeps the bill a great length of time tho this presumption may be rebutted – So and act which gives credit to the bill & induces the holder not to protest it – Ch 77 Bull 270 Ryo 80 2 Ath 611 Hand 278 Potter 46

An agreement to pay the bill on some contingency is called a conditional

Where one accepts a bill drawn by procuration or takes such bill he is bound to see that the person drawing it had power so to do 14 L & E 43.

Where a bill is accepted in payment of property in relation to which there has been a fraudulent representation such fraud is no defence unless the contract has been entirely repudiated by a return of the property 14 L & E 176 - Reid 2 Taunt 2 14 East 484 3 Camp 28

A bill of exchange never imports an obligation on the part of the drawer to pay the amount to the drawee but if the drawee receiving no funds pay the bill the law raises a promise on the part of the drawer to repay the amount 5 Hill 166

acceptance the holder is not bound to accept it but if he does he should give due notice to the prior parties of the nature of the acceptance or they will be discharged. Ch 79 Ld 101 Ch 23 103 180 Poth 47 / the acceptor is bound by it if refused Ch 80. 8 Ves 648 1152 112 2 Wils 7 Haudw 74 12 Mod 447 Bac Ab 571

Conditional acceptance leaves obligation as soon as the event on which it happens. Ch 80 101 8 Ves 212 Haudw 74 Bac Ab 571 13 Ves 182

If the acceptance is in writing the condn intended should also be in writing - for a verbal condn annexed to a written acceptance will not avoid the acceptor as against any subsequt holder if either he or any intermediate holder took it for a valuable consideration & without notice of the condn Ch 81 Haudw. 1.2.3 Bayl 50 Doug 286 96

A partial acceptance is an unconditional one varying from the terms of the bill - is an engagement to pay partly - but the holder may refuse such acceptance & treat the bill as dishonoured - tho if he accept it the acceptor is bound - Ch 79. 85. 81 8 Ves 214 Bonc 152 - Mac 68. 85 Mod 26 283 Poth 48 12 Mod 190 8 Ves 194 Bayl 78

When the acceptance is qualified or conditional the holder if he intends not to discharge the prior parties must give due notice of the nature of the acceptance. If he gives the prior parties notice of non acceptance generally he waives the acceptance as this shows he does not acquiesce in it & is an indorsement to the other parties to make arrangements for their own security / Ch 82 5.157 13 Ves 182 /

Whether an acceptance is absolute conditional or partial is a question of law - 13 Ves 182 -

By an absolute acceptance the acceptor is bound to pay according to the tenor of the bill. By a conditional or partial one according to the tenor of the acceptance. Poth. 115 Ld. Raym. 174 Boyl. 42.

Acceptance is binding in favour of third persons tho without consideration moving to the acceptor & that fact known to the holder. Salk. 130 1 Wils. 187 3 Atk. 183 2 Str. 339 Poth. 118 1 Moll. 28 f. Hence acceptance by E. for an amount of debt due from his testator is an admission of assets & will subject him personally if there are no assets. Salk. 83 Str. 1111 2 Atk. 451 622 3 Wils. 1 Stra. 1260 1 Barnes 137 Burn. 1225 13 Ves. 48.

This obligation is irrevocable & cannot in gen. be discharged except by acceptor's payment or payment. Salk. 83. Mar. 145 1 Atk. 188 Esp. D. 47.

If the acceptance is in a foreign country by the law of which it is a lesser time than it is of no force here. Salk. 84 Str. 83 Stra. 33 Sel. C. 144.

It may be waived or released by the holder without deed or writing by lapse of a period apt & it has been said that what accounts to an agreement to discharge the acceptor is a question for the jury. Salk. 83. 197 Doug. 236 4 Esp. D. 47. Sed qu. for surely holden that nothing between prop. comment intended amount to an agreement to discharge by the holder — no indulgence or delay is construed into a discharge. Salk. 84 Doug. 236 4 Esp. D. 47 Ryg. 157.

A release by the holder to drawer after the bill is drawn but before acceptance is no discharge of the subsequent acceptance for he was not liable at the time of the release. Salk. 84 Ld. R. 65 5 B. 64 3 Co. 70.

An agreement to consider the acceptance cancelled — so a message to the acceptor that the business was settled with the drawer & that

If a creditor receives of his debtor a draft on a third person for a sum now or about to be due & then accepts the note of such third person giving longer time of payment he, vacates such debt his claim & in case of non payment of the note he cannot enforce the draft of Mond 122 2 Vern 540 2 Lawrence C E 57 12 Johns 426 15 do 1133 16 do 70 15 C L R 126 5 Mond 501

Mr Vanapton that the business was settled in the manner & manner

he need not trouble himself further about it. have been decided to amount to a waiver of the acceptance / Ch 84 Doug 135-47 / This was upon an accommodation bill - qu. Does this make any difference?

Dubitatur whether receiving part from the drawer & taking his promise on the back of the bill for the residue at an enlarged time will discharge the acceptor / Ch 84 Ib cited Doug 248 / Semb not as there is no express waiver & no injury to the acceptor 2 Bull 262 1 Esp 257

Been determined that an alteration by the holder of a partial into an absolute acceptance & on refusal to pay an alteration restoring it to its original form does not discharge the partial acceptance Ch 85 - Bean 222 Mod 28 4 B & C 338. sed qu -

If the holder agrees not to sue the acceptor if the latter will make affidavit that the acceptance is forged & he does make & swear to it the acceptor is discharged tho the affidavit be false - for the cond.t of the waiver is complied with - Ch 85 1 Esp 178 Bayl 158

Where a future consignment to the acceptor & a prospect of profit upon it are the consider.ns of the acceptance if the holder agrees to take the bill of lading from the acceptor it discharges him - So also is a conditional or partial acceptance discharged by notice of a general non acceptance - Cook . Ch 85 13 R 182 -

Been holden that if drawee by acceptance makes the money payable at a banker & it is not presented there for payment the acceptor is discharged if he should sustain damage by the neglect of the holder / Ch 85 Stra 1195 / Bayl 78 and semb contra

Lex Mercatoria

The act of acceptance implies that the acceptor has effects of the drawer in his hands wherein the terms of it implies nothing dx to the contrary. Ky 156 Beaw. 455 1 Wil 185 Sal 130 8 Mo 88 Ch 1 171 205

If the drawer is compelled to pay he may recover against the acceptor Ky 156 1 Wils 185

If the acceptor has no effects of the drawer & yet pays the bill he has his remedy against the drawer - but as to all other parties the acceptor is considered as the original debtor. Ky 156 Ch 153 91 205 1 Wils 187 Sal 127 31

If the holder makes the acceptor his Exr & dies the bill is discharged & so are all the prior parties - for the right & duty are united in one person. Ch 181 1 Roll 922 Plowd 184 543 Sal 299 2 Bl 511 3 Co 18.

Non acceptance

This is a refusal or omission to comply with the request in the bill - Presentment for acceptance is necessary only in case of a bill payable at a fixed time after sight - but if in this or any other case presentment for acceptance is made & acceptance is wholly refused or offered only conditionally or partially notice must be given to the prior parties or they will generally be discharged. Ch 54 65 86 138 202 Burr 2670 1 Bl 712 1 Daut 45 Poth 133 Doug 658

Formerly it was held that a prior party omitting on want of notice must prove damage sustained by the omission (Ch 87 1 Show 318 12 Mod 16 Comp 152 -) But it is now settled contra - for the drawer is presumed to have had effects in drawee hands & the indorser to have given value therefor the holder must prove that the prior parties have sustained no damage or facts affording such

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Demand & notice in every case where a demurrer will give a condition precedent to the lessors right to forfeit for the breach of Solm. p. 191. No particular form of notice is necessary it suffices to an indenture it should merely be to enable him on enquiry to prepare him to defend

2 Bl. R. 587

The indorsee of a note for the benefit of the drawer & with a knowledge of his insolvency is entitled to regular notice

2 Bl. R. 313.

2 Burr. 128.

parties have sustained no damage or facts affording such

inference in order to subject them. Ch 87 132 203 1 B & P 406 8 182 Went 45 2 H Bl 612 1 Show 317 Peg 129.

If from the date to the time of payment the drawer had no effects in drawee's hands he is prima facie not entitled to notice - but if he had effects the fact that he has sustained no actual damage by want of notice does not dispense with the receipt of it. Ch 87 202 1 B & P 406 712 2 Ld 713 2 H Bl 610 1 Esp 333 2 Str 80 1 Bos & Pul 152 5 B & P 239 7 East. 559 4 Cranch 141

To the payee of a promissory note indorsing it with a knowledge of the maker's insolvency cannot depend on the ground of want of notice. Ch 87 2 H Bl 336 1 Esp 303 n. Contra Saunders 2 H Bl 609 2 Caines 343 1 Esp 303 n Pub 203 n (2 Ch R) (contra)

Tho the indorsee has effects in drawee's hands yet if the drawee has none the drawer cannot avail himself of the want of notice. Ch 88. 1 Esp 54

Securities lodged with the drawee by the drawer for the purpose of raising money but on which none has been received are not such effects as to enable drawee to depend for want of notice - no indebtedness. Ch 88 1 Esp 54

But if the drawee had effects in at the time of drawing the bill no subsequent assurance will dispense with the want of notice - tho it might not be of any use - as death &c of drawee - So also of indorsee if a valuable consideration passed from him at the time of taking the bill. Doug 49 54 Ch 88 Potts 12 6 10 R 208 Ld 336 2 H Bl 612 East 359 1 Esp 334 n Peg 613

If the drawee has informed the drawer before presentment for acceptance or payment that he could not honor the bill it is no excuse for omitting notice Ch 89 2 H Bl 612 336 1 Esp 333 5 B 5 B R 239 Ld 203 712 2 B & P R

3 Mun. C.S.

It affords no excuse for not demanding payment, 3 Mun. C.S.

Notice of non payment to drawer is unnecessary where he has no effects in hands of drawee / 1 Caines Rep 157. Person if drawee drawee accepts the bill — If drawee has reasonable grounds to believe that the bill will be paid by some one he is entitled to notice the, omission has no effects. 6 Binn. 623 3 Dall. 1 Stall. 94

NB necessary to make any demand of drawee of a bill or give any notice of his refusal to pay such demand must be made of the drawee or acceptor Burr 669 Stra 442 11 87.

A notary clerk always in the course of business shown the presented a bill for payment wrote in his books directions an entry of the particulars of the bill the answer he received. Held after his death that such entry was evidence of the dishonor of the bill 32 6 L 442

The notary himself must make the protest he cannot delegate this duty to another 3 Hill 56 Cl. B 217 Stat. 4th R 175 Mauch & Mulk. 87 Vandewalle v Bryant

390 824 1 Bos & P 52 Burr 1355 Doug 637 Cro 68 132 202

If the drawer has no effects in drawee's hands it affords a presumption that he has sustained no injury by want of notice - but this presumption it is said may be rebutted by proof of actual injury. Cro 87 Dav dist. 2 Str 713 Ryd 121 contra Sir E 290 in Peak. 203 n - 2 East 128

If the drawer or indorser is a bankrupt at the time of drawee's refusing to accept or pay notice of the refusal is unnecessary. Cro 68 89 3 Bro P C 1 Co. B. S 168 Semb. contra qu -

So if the drawer absconds for the holder is not bound to search for him - but a neglect of reasonable notice is excused by the death or sudden illness of the holder if given as soon as possible after the impediment is removed. Cro 89 1 Esp 526 Poth 144

If the drawee makes a conditional acceptance the terms of which are complied with by the holder no notice is necessary for it becomes ipso facto absolute as if pay if the holder engages to indemnify & he does indemnify. Cro 89 101 Bazl 71.

If the drawee accepts for part only the prior parties are bound to the extent of the acceptance without notice for to that extent the acceptance is absolute - Semb as to the residue, as to that the bill is dishonoured. Cro 90

The mode of giving notice that a bill is dishonoured is diff. in case of foreign from that of inland bills in the latter no particular form is necessary (Chal Ryd 136 42 13 East 170). But in case of foreign bills whenever notice is necessary a protest must be made & in general by a notary public. Cro 90 Ryd 156 Stew. 16 Esp 993 Pillod 8 Dav 131 Bull 271 2 Str 713 Esp 239 1 Show 164 Mol. C. 2 b 10 f 17.

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After refusal presentmt. is to be made by the notary & if the drawee still refuses the bill is to be noted for non acceptance - then a formal declaration is to be drawn out the bill if to be had / if not on a copy / called the protest / Ch 90 128 Potts 134 Mar 16 Rep 136 - / & full credit is given to the protest in all foreign countries. Ch 91 Mol 281 Skin. 72.

Noting is only a preliminary to protest & does not supply the place of it & the protest must be made by the notary himself - not by his clerk. Ch 91 2 Str 713 4 T 75 Bull 271 Rep 137.

If a notary cannot be obtained the bill may be protested in Engd by any authentical person of the place where dishonoured in the presence of two or more witnesses in the regular hours of business or at least between nine & noon. Rep 137 48 Ch 95

Form of / Rep 144 / the protest must conform to the custom of the place where made. Ch 92 159 61 Potts 135 -

It is to be made in genl. where the bill is protested - But if the bill is directed to one at a requesting payment at B. the protest may be made at either place. Ch 92 Mar 607

A copy of the bill is prefixed to the protest - But a copy of the protest need not accompany the notice of non acceptance - the notice of protest must be given / Ch 92 2 Str 1169 1 Esp 511 Bull 271 12 Mod 309 1 Deut. 245 / Sheet a copy of the protest is to be sent. Potts 135

It is not necessary to send the protested bill. Ch 92 Mar. 63 8 b 120

Upon non acceptance of an inland bill no protest is necessary to subject

Proof of the mailing of notice will support an averment of actual notice in whose the instance of a note payable to attend to its removal and directed notice to the maker shall be sent to his care & such notice was sent accordingly it was held a waiver or at least that the jury might infer a waiver Manufacturers Bank v Richardson 7 Pick 436 3 Ct. R 478

If the notary go to the makers house & find it shut up & that he is out of town it is a suff. demand 2 Johns. R. 291.

If the indorser be dead when the note falls due and there be ex. or adm. known to the holder notice must be given to him - but if none be known suff. if notice be left at his last usual abode or given to his representatives 2 Caines R. 121 17 Johns 27.

The notice shall inform the indorser in express terms that the paper has been dishonored or by any mercantile implication such as stating that legal measures will be taken is not suff. Bray 530 and 2 Ct 522 27 C. J. 351. 3 do 283

If the notice the description is suff. to put the party on enquiry it is suff. as where the amount of the note was misdescribed there being no other of that 2 do 3 do 456

There is no particular form of notice if it give suff.t knowledge to the party of the particular note which has been dishonored & is suff.t tho there be a variance in the note set forth in the notice & the actual one 11 Wend 376 9 Pet. 47

Notice given by one of several parties shall inure to the benefit of all 18 Johns R 327 2 Th. & 318. But if given by a stranger it amounts to nothing 3 Wend 179 (contra Sedw. 320 n 25) vid 10 Ct 217.

The inquiries with the utmost diligence were made to find the indorser or his residence until several weeks after the delivery of the bill & then took a day to consult counsel when he gave the notice held suff.t & also that the common allegation of notice was suff.t & not necessary to state under what the special circumstances of the case S. Bank Ken 387. Wells v Thomas

Upon non compliance of our inland bill no protest is necessary to subject

the prior parties, any act arising from drawee's act is a non acceptance Ch 93 Str 80 Stat 131 3 Bg & R 993 –

Said in 1 Str 169 that the notice must express the holder's intent not to give credit to the drawee – qu Ch 93.

At C.L an inland bill cannot be protested – By Sts. 3 & 4 Ann protest is required for the purpose of entitling the holder to cost interest & damages & it to be made as on foreign bills. Ch 93–4 Stra 910

It is not necessary however to entitle the holder to recover the face of the bill therefore seldom made Ch 94 Ryd 150 / But notice of non acceptance must be given as well in case of inland as of foreign bills. Ch 95 Ryd 150.

In case both of foreign & inland bills notice sent by mail is suff. tho' the the letter miscarry. Ch 95 2 Str 509 Burr 199 Peak 2 221. Contra Potts 48

Where there is no mail sending by the first direct & ordinary mode of conveyance is suff. tho there may be an earlier accidental conveyance Ch 95 2 Str 515

It seems that in case of foreign bills protest must be made within the usual hours of business on the day of refusal. / Ch 95 152 2 Str 172 2 Str 748 Mar 112 Sed qu Bull 271 Ch 95

Delay is equally inevitable accident. Ch 95 Potts 144 2 Salm 81.

Notice of non acceptance & in case of foreign bills of the protest must be sent within a reasonable time to the parties to whom the holder means to resort. / Ch 96 2 Str 509 Bull 271 Ryd 126

Lex Mercatoria

Whether it was sent within a reasonable time is a question compounded of law & fact to be submitted to the Jury under the direction of the Court. 6 East 3 1 Pao 8 & 46 1 Cow 248 8 Johns 117 vide 1 T.R. 167 -

It should be given on the day of noncompliance if there is any post or ordinary conveyance - formerly holden to be suffn. if given within two months - Ch 96 153 4 B & P 74 Se 1 p 713 Stra 829 1 Mar 97 2 H Bl 565 1 Mod 27 12 B Comb 152 1 Ch rep 318

If such prior parties reside in the place where compliance is required + notice should if possible be given on the day of refusal to the parties at a distance by the same day's post if there be any. Ch 97 Bq 12 b 1 B & P 1 Bq.

It has been holden that the notice required must come from the holder / 1 B & P 167 Bq 12 b / Vide contra by Rodgers in 1798 & that notice by drawee was suffn. Ch 98

I think notice by one party having a right of action on the bill may enure to the benefit of the other parties who may have claims upon those standing before them & make further notice unnecessary - Ex - By second indorsee, will operate in favor of the first - It is expedient for each party after the drawer to give notice per himself. Ch 98 Bayl 83 Santen 863 n

It is necessary / when necessary at all / to give notice to all the prior parties to whom the holder intends to resort in any event for payment Ch 86 98 Burr 2670 1 B & P 712 1 Nent 145 Potth 183

Tho the drawer had no effects in drawee's hands it does not dispense with the necessity of notice to any indorser to whom the holder intends

1 Johns R 294 - been notice be given until the next day. 4 Wh. 170 that the
5 do. . . . 375 acceptor has the whole day to pay in by Banyan. 3 Burr. 1602
that notice may be given on the first day - acceptor has not the
whole day to pay in - 4 Mont 566

& the notice must be personal or left at his dwelling house 10 Johns 490
20 do 372.

Where the drawer of a bill is a partner of the house on which
it is drawn notice of its dishonor need not be given him
20 Johns 174 Contra 2 Cl & R.

The holder is entitled to one day after the dishonor of
a bill to give notice Ch. 285 5 Cranch 303 1 Mont 734
& if the dishon. is made on Saturday notice may be given
on Monday 4 Mont 566

In series of conditional acceptances, want of notice is cured by

After a bill has been protested for non acceptance & due notice given indorsr of notice in case of non payment, does not necessary to charge the indorser — } 5 Shark 375 —

If the indorser has accepted from the drawer a general assignment of his estate for his security, agst his indorsement it is a waiver of notice Vaughan 334 vide 10 Ld 31 h

If the indorser has been notice subsequent promise is a waiver 5 Shark 375

[illegible] the necessity of notice to any indorser to determine the drawer intends

to resort. Cro 99 1 Str 712 Peak 202 n. Bay 175 Peak. 222

Want of notice to the drawer is no defence to the indorser the formerly that, otherwise. 2 Str 443 Sell 131 Cro 99 203 1 Str 421 Burr 669 1 Esp 334 n.

The consequence of a neglect to give notice of non acceptance may may be waived or avoided by matter ex post facto - thus payment of part by a prior party amounts to a waiver of the objection of want of notice & admits his liability Cro 102 32 58 202 Str 1246 2 Str 113 Bull 276 Peak 202 1 Esp 57. / Seems it has been holden if the promise was made without a knowledge of the fact of non acceptance / Cro 102 Burr 2676 1 Str 712 Sed Doug 657 and / But this doctrine appears to have been overruled & resolved that such promise implies that due notice has been given & supports the assumpt. of it in the declar. 1 Esp 334 4 East 231 1 Bos 326 2 East 467 3 Salm 68 5 do 375. 385.

× And it has been holden that a promise by a prior party, without knowledge of the legal consequence of the holder's neglect does not bind. As where the holder gave time to the acceptor & the Deft. notified of the fact. Cro 158 102 sed qr. sed Doug 454 657.

(Decided in the same case that the drawer having paid the bill under such promise may recover the amount of the holder. Cro 102. 158 sed qr.

Suppose the prior party to have sustained no actual damage from want of notice should the action lie? Cro 103 Str 824 1 Str 285 Burr 1355 Str 390. 2 Doug 637

In cases of conditional acceptances want of notice is cured by

by performance of the condn. before the bill becomes payable - for the acceptance is eventually absolute. Ch 101 1 Str 212 Hardes 74 Comp 571 13 Ves 182.

Acceptance supra protest

When a foreign bill is protested for non acceptance it may be accepted supra protest. Ch 23 103 22 Vs 209 180

The drawee himself may then accept for the honor of the drawer or any indorser. This is the usual course when the bill is drawn on account of a third person & the drawee tho unwilling to accept on his account is willing to accept for the account & honor of the drawer &c. Ch 103 Kyd 152 Beav 456 1 Pow C 189 13 Ves 209.

So if unwilling to accept on the drawer's account he may elect for the honor of an indorser in which case he should immediately send a notest to the indorser. Ch 103 Beav 33 Sup.

This mode of acceptance operates to ~~subject~~ relut the presumption arising from a simple acceptance that the acceptor has effects of the drawer in his hands. Pend. Ch 209 Kyd 136 Beav 455.

The effect of such an acceptance is to give the acceptor a right of indemnity on the bill against the party for whose honor he & against all parties before him. Whereas a simple acceptance according to the tenor gives no right of recept against the drawer or him on whose account the bill is drawn. Kyd 252 Beav 458 13 Ves 209 1 Pow C 139

If the drawee refuse to accept at all any other person may accept

The deft. was the acceptor of a bill drawn by A. & by A. indorsd. to B. his banker. Shortly after its delivery the deft. paid A. the amount but the bill was left with B. the banker. In an action by B. agst. the deft. the acceptor it being shewn that A. alone had paid upon his banking account a sum suffct. to cover the whole of his account including the amount of the bill & that no demand was ever made upon the deft by B. upto the commencmt. of the suit it was held that deft was not liable. all the balance was then against A. Field v Carr 5 Bing 13

[illegible] any [illegible] person may accept

for the honor of the drawer &c. Ch 104 Beaw 38 Mar 125 Salk 89 b Ca Salk 129 Ry 153

Acceptance for the honor of the bill is the same as for the honor of the drawer. Ry 153 Ch 104

A bill previously accepted supra protest by one may afterwards be accepted by another for the honor of a diff. party. Ch 104 Beaw 42.

It is said that the holder is bound to receive an acceptance supra protest when offered by a responsible person yet being under a protest not affecting him unless he has order from the party remitting it to him not to receive such acceptance. Beaw 27. 38

But this seems not to be law for it has been holden that he need not receive such acceptance in any case. Ch 104 12 Mod 410 Ry 155

If after acceptance supra protest by a third person the drawee is willing to accept the acceptor supra protest may with consent of the holder permit it not without. Ry 154 Beaw 46 47

The holder should have the bill protested before he receives an acceptance for the honor of a party - Semble it is said the drawer may object that the person accepting is not the one drawn upon Ch 105 Mar 88 125

The acceptor appears before a notary public with witnesses & declares that he accepts the protested bill for the honor of the drawer &c & that he will satisfy it at the time appointed & subscribes it thus "accepted supra protest in honor of J. S." or accepts J. S. &c Ch 103 Ry 158

An express or supra protest is as binding on the acceptor as a simple protest - for it is immaterial to the holder or whether drawer the bill was accepted. Ch 105 Beaw 35 46 Str 575 12 Mod 410 Com 10 7 Burr 1672

If accepted for the "honor of the bill" he is liable to all the indorsers as well as to the holder - to all the parties subsequent to the drawer for as to them he assumes the responsibility of the drawer. If he accepts in honor of a particular indorser he is liable to all the subsequent indorsers for the extent of his liability is no greater than that of the party for whose honor he accepted. Such acceptor has a right of indemnity against the party for whose honor he & all prior parties, & if he sustains damage he may have his remedy by action for all & then he is an indorser. Ch 105 13 R 2 69 Beaw 47 Ther 139 Potte 171 1 Esp 113 Rego 155 Ch 164

If then he accepts for the honor of the drawer the latter only is bound to indemnify him - If for the honor of the indorser his claim of indemnity is against the indorser for whose honor he & all the prior parties - but not against subsequent ones - for he acquires the same rights as the indorser for whose honor he acted. Ch 106 22 64 Beaw 35 44 Mod 62 Rego 155 Beaw 159 Sutto 891 Potte 111

Transfer

Bills payable to B or order - to the order of B - to B or bearer or to the bearer are transferable or negotiable ad infinitum. Ch 107 Rego 63 Stor 211 2 Bl 1167 Burr 1517 27

So of bills payable to the order of a fictitious payee as against such parties as know the payee to be fictitious. Ch 109 3 Bl 451 1 W Bl 569.

Demand of payment must be made on the last day of grace 1 Selw 273 1 Rep 262 2 Ld R 126 —

Courts of Law will take notice of the assignment of debts in action not negotiable & protect the rights of the assignee against any person having notice 1 Johns C 31. Dale R 345 / actual notice not material any thing which is suff to put the party on enquiry is notice 1 Johns R 47, 188 1 Johns C 411 5 Johns R 135 1 Bos & Pul 47 Hawes v. Watson 362 and 5 Johns R 152

A negotiable note "indorsed" in blank may be made payable to any person whom the holder pleases &c. & it can take no advantage even tho the note is indorsed after due by Selwyn R. & B. Post 572 n 5 Mond. 490 mutan pecunia 15 do 640 id 10 Schwell 644

But the cash. of a bank cannot sanction an entire or a note indorsed in blank belonging to the bank & which is lost or in the hands of dept. for cash. is not the holder 5 Mond. 494

When a bill is not negotiable a transfer will operate against the party making it and it should never the bill negotiable. Ch 5 109 22 Sal 125 Ld 3 Skin 304 3 Ken 303 2 Bl 1242 Burr 1226 –

Whether a bill is negotiable or not is a question of law except in new cases. In such cases evidence of the custom may be received / Ch 28 109 Burr 1216 Bl R 295 Doug 653 Watts LP 232 / qu. Evidence to the Jury or information to the Court?

Inquiry a valid transfer can be made by the payee only or other person having the legal interest in the bill – Hence an indorsment by another person of the same name as payee does not transfer the right – tho it will bind the indorser but not the other parties. Ch 110 21 4 Bl R 28 1 H Bl 607

Promissory notes of a bill payable to "bearer" or to "order" & indorsed in blank if the person receiving it have no reason that the person indorsing had no right to transfer it – Secus of a bona fide receiver for a valuable consideration Ch 9 110 21 201 209 Burr 1676 7 Bl R 427 Ryd 102 Burr 452 Bl R 485 Doug 611 33 Bl R 738

If a feme sole being a payee or holder marries the right of transfer is in her husband. Ch 110 Str 516 3 Wils 53 Sel. Ca 96 1 Atto 226 Ryd 107

If payee or holder becomes a bankrupt the right of transfer certainly gen. lies in his assignees from the time of the act of bankruptcy committed – But if the bankrupt delivered the bill & forgotten to indorse it he may do it after the bankruptcy. Ch 111 Beav 469 2 H Bl 335 Ryd 107 Peak C 50

On the holder's death the right of transfer devolves upon his personal representatives. Ex. on Ch. Ch 111 3 Wils 1 Str 1260 2 Burr 137 1 Bl R 487 1 Ld Ray 622 Burr 1225 Ryd 107

Lex Mercatoria

If a bill is made or transferred to two or more the interest or right of transfer is in all of them collectively & not in one alone but their interest may be transferred by one if they are in partnership. Ch. 112 Doug 653. Rep 106

If payable to A for the use of B the right of transfer is in A only. Ch. 112 149 Carth 5. 2 Vent 307. 9 Mod. 3 84 Rep 107 2 Show 509.

It is said (Rep 102) if a bill is endorsed to an inst. & he endorses it to another the latter may recover of all the prior parties except the inst. & sed qu. under the bill in the hands of the inst. is transferable by delivery. Sed qu. contra. the endorsmt. of the inst. being only evidence how can the prior parties take advantage of it?

Bills are usually assigned after acceptance & before the time of payment. But a transfer may be made before the bill is complete. E.g. Indorsing a blank paper & delivering it. Ch. 112 Doug 496 514 1 Atk 31 1 Ld Ray 89

A credit transfer may be made after the time appointed for payment, but such transfer affording ground for suspicion the holder takes it subject to the Eq. to which it was subject in the hands of the prior parties if he had knowledge of such Eq. & perhaps if he had not. Ch. 52 113 2 Atk 571 1 Show 163 1 Ath 430 Rep 89 283 3 Atk 80. 3 P. 425 Burr 1516 1 Wils 230

The party who transfers a bill after its due cannot avoid himself of such suspicion as against third persons who become the holders for valuable consideration — for the irregular transfer is the act of the Deft. — qu. Can he object as against the immediate transferee? Ch. 119 7 Atk 423. 30

An indorsment after payment (the day of payment I suppose having passed) takes no other period ~~making it~~ than the party making it. Thus where after payment by the drawer the bill was indorsed — it was

A deposit or a pledge of a note will not amount to a transfer & it remains subject to all equities. 1 Bos 299 Harmer v Eden may be sued in the name of the holder

altho, the holder of a bill indorsd after due takes it subject to all equities. 2 Ca 372. 1 Saq 183. yet the declarn of the person who indorsd it after due cannot be given in evidence. 5 Ei & C 253. Cushman v Wallis.

A note post dated & transferred before the day of its date affords no scene of suspicion so as to subject it to equities. she may recover 7 Mend 439 13 East 516

as the most common mode. the it does not per se transfer the interest

Where a note has appeared the substantial purpose for which it was intended an accommodation indorser cannot object that such purpose was not effected in the precise manner contemplated 9 Wheat 172 19 Johns 176. 4 Cranch 567 4 Wheat 66 2 Wheat 66.

But where it has been diverted from its original destination & improvidently put into circulation by the maker or his agent the holder cannot recover against an accommodation indorser without showing that he received it in good faith in the ordinary course of trade & paid a valuable consideration. 9 Wheat 172 5 do 566 6 do 615 10 Johns 231 15 do 270 1 Burr 452 3 do 1526 Doug 633 1 Bos 648 4 Esp 56 2 Wilson 137 4 Barn & Cres 466.

where after payment by the drawer the bill was indorsed – it was

resolved that the holder could not recover against the acceptor. Cro 115 176 1 Ld Raym 189 1 Wils 46 4 Term R 470 Contra Potter 186 ind Cro 112

A bill drawn in part may be indorsed over for the residue. Cro 115 Str 360 Carth 466 12 Mod 213 Bull 65 2 Wils 262 Cro Jac 21. 61.

This mode of transfer is governed by the legal operation of the instrument & not of course by the terms of it. E.g. Bill payable to a fictitious person or order is transferable as one payable to bearer if not all. Cro 115 1 Ld Raym 600

A bill payable to A. or bearer or to A or order & indorsed in blank may be transferred by mere indorsmt. or delivery. Cro 115 Str 442 Holt. 115 Stark 332 4 B & Ald 33 Doug 611 Peak. C 225 1 Esp C 180 Com Dig 311 Str 557 Bull 193 2 Esp C 210 Keyl 83 Burr 452 1 Salk 126 Str 485

But a bill payable to A or order to the order of A or to A or his assigns or to the order of the drawer is not in gent. transferable in the first instance except by indorsmt. But when indorsed by payee in blank it proceeds by mere delivery. Cro 115. 8 Mod 87 1 Ld Raym 585 Keyl 88 1 Esp C 180 Doug 611. 33

No formal words are necessary to a valid indorsmt. – it is suff. that the indorser's name be written on the back or any part of the instrument by himself or agent. Cro 116 2 Ld Raym 748 Keyl 88 Str 1103 1 Bull 126 30 Term R 443 Com Dig 311

Merely writing a number on the bill by the payee is no indorsmt. Cro 117 3 Ld Raym 77

Indorsements in blank

This consists in merely writing the indorser's name & nothing over it. This is the most common mode. This it does not per se transfer the interest

but gives the holder power to constitute himself assignee by filling it up to himself & this he may do at the time of trial. Ch 117 Ry 89 1 Bell 126 b 30 12 Mod 192. 244 Ld R 443 Bull 275 Str 1103 Comth 311

The holder may fill the blank either with an order to pay himself which constitutes him indorsee or with a receipt which shews that he is only agent of the indorser & so bound. with a power of Attt. Ry 95 Sal 125 1 Show 153 Ld R 871 Bl R 297

While the indorsmt. remains in blank the action may be brot in the name of the indorser & it cannot be objected that his interest is transferred. Semble after it is filled up with an assignmt. Ch 117 Sal 125 3 b Ld R 871 12 Mod 193 244 1 Show 153 Str 1003.

The holder is a witness in such case in trover Ry 96 Ld R 871 Sal 130 qu. if proved to be the ~~bona fide~~ owner

A blank indorsmt. by payee makes the bill transferable by mere delivery for any one of the successive holders may fill the blank with an assignmt. to himself & if the indorsmt. remains in blank the negotiability of the bill cannot be restrained by any subsequt. indorsement in full transferring the interest for the holder may strike out the last & fill up the former to himself qu. & it necessary to strike out ye in blank? Ch 118 188 201 Holt 296 Ry 205 1 B & P 181 n 4 210 Doug 633

If the payee makes an indorsmt. in full a blank indorsmt. by the indorsee will make it negotiable by delivery from him. Bayl 158 1 B & P 182 n Ch 118

But a bill payable to order is not negotiable by mere delivery

Indorsmt in blank

Qu. whether a Bill indorsd in blk. & afterwards specially indorsd — can the subsequt holder strike out the special indorsmt & bring his action as first indorsee — 4 Term R 27?

A note indorsd in blank may be filled up with the name of any person 11 John R 53 b cu 110. 7 w 53

Cowbrce Ch 19 Dec 1221 / Denis Lamb. of the indorsement. ~~the~~ / /

If one partner without the knowledge of the other indorse paper for the accommodation of the maker the partnership is liable to pay a bona fide holder without notice 15 Mass 366. 14 do 133. 7 do 188. 309. 7 East 210 Ch. B 30

But a bill payable to order is not negotiable by mere delivery

only indorsed in blank by payee or an indorsee & it is not negotiable at all without an indorsement of some kind by payee. Ch 116 7 Mod 87 Ryd 88 Vil 151 bob Doug 611 17 38.9.

Indorsements in full

Where express to whom they are made. Certify the contents C.B. - They contain in themselves a transfer of the interest to the person named Ch 118 Ryd 89 Potts 22.3.4.

They make the bill further negotiable only by the indorsement of indorsee - tho if he makes a blank indorsement it is afterwards negotiable by delivery. Ch 118 Boyd 158 1 Esp 182.

The negotiability of a bill originally negotiable cannot be restrained merely by payee or special indorsee but by express words of restriction - The direction of the words "or order" does not restrain the subsequent negotiability if payee indorses in blank & it remains so even in no way be restrained by a subsequent indorsement transferring the interest. Ch 119 Com 311 151 295 - 1 Burr 1216 Doug 617 or 37 Stra 517 Sel. Ca 120 Ante.

Restrictive indorsements

These contain express words restraining the negotiability of the bill as "pay to C only" - the effect is to stop the currency of the bill. Ch 119 Potts 155 1 Mar 72 Doug 617 37 Mead 219.

The very indorsee having the absolute property in the bill may limit the payment to whom he pleases & thus stop its currency. as "Pay to C only" & he cannot negotiate it by filling even a blank indorsement. 1 Ch 119 1 Burr 1227 1 Atk 249 1 Wood 131 Potts 89 2 Str 28 119 Doug 617.37 Contra Ch 119 1 Burr 1226 1 Term Reports. if the indorsement the

restrictive transferred the interest & there was a former indorsement in blank. By indorsement by lease in blank by indorse to A or to B only" A may negotiate by delivery. Bay may be filled by any holder to himself. Cute.

A transfer cannot be made it is said after acceptance for less than the amount of the bill for it would subject the acceptor to two actions whereas by his implied contract he intends to subject himself to one only. Ch 120 Pk 300 Carth 466 12 Mod 218 Salk 65 / Sed qu. bill not an indorsement for part find the acceptor? Ld 119

But if indorsed for part only before acceptance the acceptor is liable to the indorsee - his acceptance implies an engagement to pay the bill according to the indorsement. Ch 120 Beaw 266. / Hence the drawee it seems can never be subjected by such indorsement unless the indorsement is made before the bill is drawn. Pk 360 Salk 65 Carth 466 Ld 109

After payment of part it may be indorsed for the residue. Ch 120 Lewis 162 1 Salk 65 Pk 360

To complete the transfer the bill must be delivered to assignee. Ch 115 Bl 21

The transfer of a bill by indorsement is similar in legal effect to the making a new bill & the indorser is in almost every respect as a new drawer on the original drawee. Ch 121 Stra 478 Salk 133 Ch 63 99 170 187 3 Salk 68 2 Burr 441 95 501.

On this principle it is said a promissory note may be declared on as a bill of Exchange - indorser being considered as drawer of a bill. Ch 121 170 4 Mod 149 6 Mod 29 Burr 676 Pk 743 1 Salk 132

Where a bill is void - Ex. for want of a stamp it cannot be used to prove any fact in the case Ex. to prove its indorsement to Pl. 20 L.J. 464 overruling Bishop v. Chambre 7 Dana Ex. 83

Bill in 15 Mod. & B. Eng. 485 not an indorsement on the back of a negotiable note making its payment depend on a contingency does not upset its negotiability but merely give notice of its connection to subsq. holders in Eng. it is considered as part of the note Chit. bill 4 Camp. 116 4 Bach. 25

make the subsequent other article. Chit. 123 [illegible] 12 J.C.L. 447 Mod. 90.1

Same all the obligation to which indorsement subjects indorser in favor of indorsee in the same a bill of the drawer to payee (Ch 122) & the obligation may be discharged by indorser's neglect or otherwise as much bill of drawer to payee — so by payment made by another party. Ch 123 24 Wils 1 H & M 89

Transfer by delivery if made for an antecedent debt (or for a valuable consideration passing at the time) for a distribution expended Lid Ch 123 12 Mod 203 408 517 Sal 124 3 B & P Mott 208) as for goods sold subject the party making it in favor of his immediate assignee to all obligations similar to those created by indorsement Ch 122 54 200 7 H & M 64 3 B 52 2 P & P 928 12 Mod 244 408 521 Ryd 90.

Exception. If it is expressly agreed at the time that the assignee shall take the bill as payment & stand to the risk — not of the drawer — the receipt in full is no evidence of such agreement. Ch 123 54 7 H & M 65 Mott 121 Co. B. S. 120

If not thus agreed & drawer fails to pay, assignee may recover of the assignor on the consideration of the transfer — as for goods sold &c (Ch 123 131 7 H & M 65 3 B 928 2 P & P 928) but not on the bill Ryd 90.

But as the assignor's name is in case of transfer by delivery is not on the bill he is not a party to the instrument — hence there is no privity of contract between him & the subsequent assignee therefore no action lies against him except by his immediate assignee (Ch 23 123 3 H & M 80 Coutt 270 East 61 3 B & P 928 Burr 1525 1 Mod 130 3 H & M 174) & even his immediate assignee cannot subject him if the transfer is on a discount — i.e. by way of sale — it is then like the sale of any other article. Ch 123 3 H & M 87 1 East 447 Ryd 90.

the drawer is discharged by payment made by another party. But the taking of one of the parties in exn. does not discharge the others - so if the former is discharged from prison by the holder. Ch. 124 15 Est 82 Wils 46 Ld Ray 189 Bulk 1235 4 Bur 825 2 Blacc 481 94 Salk 690 Sat 574 3 Mod 87 Lutw 378.

If the holder of a bill transferable by delivery loses it & it comes into the hands of one bona fide & ignorant of the fact before it is due he may recover upon it against the prior parties - In such cases ex. is evidence of property. Ch. 124 10 50 Burr 452 1 Str 7 Salk 427 Ld Ray 738 Sat 120 3 Term 71 Mod 47 Doug 611 or 633 2 Salk 76

If the holder has not given a good consideration for it but the drawee not having notice of the loss pays it he is not bound to pay the true owner. Ch. 125 50 4 Bur 28 1 Ld 807.

But if the lost bill is paid out of the usual course of business the drawee it seems may be compelled to pay it again to the loser - Payment before due will not discharge the drawee unless made to the true owner. Ch 125 1 Esp R 40 151

If a bill transferable by indorsement only is transferred by a forged indorsement the holder acquires no interest in it - & the original holder may recover against the drawer or acceptor tho he should have paid it before to the holder ~~or acceptor~~ under the forged indorsement. Ch 125 51 2 Salk 28 1 Ld 807 Doug. 617

If the drawee of a foreign bill loses it whether the acceptor or not he delivers it to a wrong person he must give to the payee or his promissory note payable when the bill should be - If he refuses protest must be made

1 g [illegible] - of we respectfully protest must be made

for non acceptance & afterwards for non payment - the drawee then becomes liable to an action - this rule does not apply at C L to inland bills - Cro 128 Becw. 188 Mar 121 Bull 271

In all cases of a bill lost if a new one cannot be obtained protest may be made on a copy. Cro 128 1 Show 163 -

If the drawee abroad refuse acceptance send, the holder may protest it for better security if refused & must give notice of the dishonouring. Cro 128 Bl 743 Mar 27 111 Beav 22.29

The security is given by a third person engaging under the protest to be bound as principal for the payment Cro 129 Mar 28

Gen. rule - The holder must present the bill to the drawee for payment at the time when due if a time is appointed & if none is appointed then within a reasonable time Cro 130 202 Potts 129 7 Bl 581 Burr 669 Sal 127 Stra 1187 Bull 1170 2 Bl 1170 1 Bowdo 295 1 Keb 120 1 Sess he loses all remedy against the drawer & indorser Cro 130 Burr 669 7 Bl 581 1 Show 155 Keb 120 Bull 182

Formerly distinction between a bill given in payment of a prior debt contracted at the time of giving the bill now expired. Cro 131 12 Mod 203 408 Holt 299 Sal 124 Keb 171 Bull 182.

If the acceptor is dead presentment is to be made to his Ex. or Adm. if any if not at the house of the deceased. Cro 1 132 Potts 116 Mar 134 Mod 10.34

If the holder is dead his Ex. he is to present for payment & it is doubtful he should do it that the bill is not forged Cro 132 Mar 135 -

Neglect to present for payment may be excused in the same manner as neglect to give notice of non acceptance may be excused. Cb 132 202 Lenta

The acceptor himself cannot defend on the ground of delay in presenting for payment or of an indulgence to any of the other parties - for he is first liable & has received no injury. Cb 84 183 Doug 235 4 T R 5 2 Ld

Said that action lies against the acceptor without presentment for payment the action itself being a suffn demand / Cb 133 10 Mod 38 Bayl 78 108 / Sedgw as acceptor may not know whether holder is or where to find him to make ~~acceptance~~ tender Cb 133 Stra 222 Ang Barring 93 Potts 14 Mar 78

In case of foreign bills if the course of exchange has altered even after acceptance sent / the acceptor is to pay at the rate of it when the bill falls due. Cb 133 Potts 174

If the acceptor engages to pay on or after demand he may clearly insist on the want of presentment. Cb 134 2 Show 235

If he appoints payment to be made by another person he as well as the other parties is prima facie entitled to insist on want of presentment to that person - Semble that person had no effects in his hands. Cb 85 134 Stra 1195 Bayl 8 2 Ch Ca 509

Presentment is to be made by the holder or his agent & in general is to be made to the drawee tho it is suffn if made at the house of acceptor if he is not there or at the place appointed for payment. Cb 134 1 Esp C 115 10 Mod 285 1 Ch 167 / Cb 157 Peake C 179 Dow 742 / Potts 129 1 Esp C 512 514 2 Ch Ca 509 12 Mod 241 Mar 106 Cowd

If the place appointed is the merchants house inspection of his books is a suffn. demand. Ch. 135 2 M & S 509 / What necessity of this?

If the creditor has removed the debtor should enquire at the place if he remains present there. Semble if he has absconded no demand is necessary - If he has left the kingdom without absconding no demand & necessary presentment at his home is suffn. Ch. Ev. 136 Stra 1087 Bayl 58 Ld Ray 34 1 Esp. 511 Ry. 125.

No demand on the drawer is necessary to subject the indorser Ch. 136 Burrow 669 Stra 441 Ld R. 243

The time of payment where the bill is payable at a certain time after date after sight or at usance depends upon the appointment made in the respect in the instrument Ch. 136

Where the time is not expressed it depends upon the circumstances of the case distance &c. Ch. 126 46

In the former case however the bill is not payable at the time mentioned - days of grace being allowed / 4 B & R 170 Marsh Potts 141 /

In the latter when the bill is payable at sight or on demand days of grace it is said are not allowed / Ch. 137. 46 Contra 1 Selwyn 328 2 Bain 343 3 Esp. 195 Ball 147 / As to bills payable at sight the authorities are contradictory. Potts 12. 72. 98 Beaus 254 1 Show 183 Ryd 11 1 Burr 303 Bayl. 23 62

In such cases the bill is to be presented within a reasonable time. Ch 146 2 Green. 247 57 Stra 508.

Lex Mercatoria

A bill is drawn at a place using one chronological style & payable at a day certain at a place using another the time of payment is ascertained by the style of the latter place. Ch 59 83 138 Bayl 68 Poth 55 Beaus 251 Mau 102 Contra Ryd 8

If drawn at a certain time after date or sight or at usance the day of the date in the first & last cases & of presentment in the other is excluded. Ch 138 Dr & B 280 Sutto 1591 Beaus 252 Bourn 303 Poth 13.15 Bl R 212 Contra Bort. 396

The govt. rule of C.L. in other cases is diff. 2 Vent 308 8 Bl R 623 Pao. pow. 428 Cro 714

If a bill payable at a time fixed after date has no date the time is computed from the day on which it issued - Explicitly Ch 43 139 Bayl 68 Dr & B 107 4 Bl R 337 Cond Ba

Days of grace

There are allowed to usance & are probably so called because the indulgence was originally gratuitous tho it is now a matter of right. Ch 139 4 Bl R 151 Ryd 121 12 Ch 59 261

The number of them is diff. in diff. places according to the custom of the place or country - In the U.S. & in Eng. it is three. Ch 130 Beaus 260 Mau 94 Ryd 9

They are computed according to the custom of the place where payable & the bills are to be presented on the last day - Both here & in Eng. Sundays & Holidays are included in the computation. Ch 140.3 Poth 139

Hence if the last day of grace is a Sunday or in Eng. a great holiday a demand should be made on the second day & if not then paid the bill is dishonored In other cases presentment before the last day is a mere nullity Ch 141

If a demand is made on the third day of grace & payment refused the holder may treat the paper as dishonored so far as to give notice on the same day or next to the prior parties but he cannot institute a suit until after the expiration of all the days of grace 3 Mond 170 2 Pick 125 ~~400~~ contra 1 Pick 401

If the 3d day of grace fall on Saturday demand & notice may be made & given on that day 6 Wheat 102. notice may be given on the last day of grace 6 Wheat Rep. & 104

The demand can be made on Sabbath day & notice may be given on the following day 2 Conner R. 343

When the computation of time is to be made from an act done the day on which the act is done is included 9 Crunch 104 When the expression in a deed are "from the date" if a present interest is to commence from the date the day of the date is included but if they are used merely to fix a termini from which to compute the time the day is in all cases excluded 4 Wash. 232. 3 Pet. Cir. R 300 n Where a promissory note is payable in a certain number of days the day of the date is excluded Pearsoy v Williams 15 Mass 144 Doug 463 3 T R 623

Where a bill is payable at sight or a certain number of days after sight there is no fixed rule for its presentment but the holder must use due diligence to put the bill into circulation 30 Johns 146 2 Hill 565 –

In the law merchant the day on which a bill is payable at so many days after sight is excluded in the computation of time & this is the only exception to the gen. rule supra 4 Wash Supra –

Dk 743 Mar 95 Stra 829 Kyd 120 1 Esp C 261 2 Camp R 343

Usance

This is the usual or customary time appointed by usage for payment in between the countries between which bills are drawn. Foreign bills are usually drawn at one usance or at usance — the length of Usance is diff. in diff. countries. Ch 141 Kyd 4

If a bill is payable at a month or months after sight or date the computation is by calendar months. Ch 143 Beav 253 Mer 74, 90 Kyd 6 Semble as to other instruments in gen. 2 Bl 141 4 Bl 224 2 East 333.

If a bill is payable at a fixed period after sight the time is computed from the day of acceptance or protest for non acceptance. Ch 144. 4 Bl 212

Where no certain time of payment is expressed presentment must be made within a reasonable time. Ch 116 36 2 Green 247 57 Stra 508 415 910 1175 1248 Bl R 1. 168 Kyd 45 Bay 165 Doug 515 2 H Bl 568 365 Dk 928 Bl R 168

The day of presentment being ascertained presentment must be within a reasonable time before the expiration of the day & usual hours of business. Ch 149 148 Bay 52 67 Kyd 125

On presentment for payment the bill should not be left with drawee unless paid, if it is presentment is not considered as made till the money is asked for. Ch 149 Stra 416 910

Payment

In gen. payment should be made to the owner of the bill or his agent. Hence if made to the payee after he has transferred it it will not avail

the party paying in a bill transposable by delivery & bot. Ch 149 Potts 164

If payable to bearer or order for the sum of 10 payment. Held to be made to bearer or his order Ch 149 2 Vent 310 Carth 5 Ryg 104 Cunla.

Held that when money is payable on a day certain the party bound is allowed till the last moment of the day to pay it. Ch 153 1 Roll R 189 + 1 Saund 287 11 Ch R 173 / Semble in foreign bills - for as the protest is to be made on the last day of grace & notice to be sent if payable on that day the holder may insist on payment within the hours of business. Ch 9 Q B 153 Ryg 121 4 Ch R 174

But as the reason of the last rule does not apply to inland bills it seems that the acceptor is indulged till the last day of payment moment of the day of payment. Ch 147 53 62 4 Ch R 176 Bayl 167 Potts 140 Dech. Ryg 121 4 Ch R 174 How does this rule comport with another that a tender must be made at the utermost convenient part of the day?

If a bill drawn here is payable in a foreign country & in foreign coin the value of which is afterwards reduced it is to be paid according to the course at the time of drawing. Ch 145 Skin 272

If the holder compounds with the acceptor without the consent of the other parties they are discharged - for they are deprived of their remedy against the acceptor - Semble if he only receives a dividend the acceptor being a bankrupt - for it is advantageous to the other parties - but he must give due notice of non payment. Ch 155 Co. B. S. 160

Held that if the holder receives of the acceptor less than is due in part satisfaction without consent of the other parties they are discharged - for it shews an election to have the money of the acceptor / Ch 156 30 Ch R 744

Where payment of a note payable at a particular place is demanded personally of the drawer elsewhere & an objection made at the time it will be suffn. 3 Johns. C 70

A note falling due the 4th July must be paid on the 3 2 Cranch C 105

Where no place of payment is fixed in a note it seems that parol evidence is admissible to show before it was a good payment should be made 1 Johns. R 285. 4 J 87.

[illegible] payment of a promissory note must be made on the day of its payment

[illegible] an [illegible] to name the money of the [illegible] of Feb 13 0 2 1 0 744

Sal. Ca 147 Stra 745 Bull 273 / Sed qr. if due notice is given. Bull 271. 3. 5 Mar 83 & Ch 156. 66 Contra Co. B. L 167 Ch 84 133 15 Mer 68 85

It is said to be a doubtful whether a party bound can institute a receipt as a contr. of payment. Bent. not / Ch 134 5 Peak 179 Sel 742 / Peak 179 2 Ch Ca 31 Win 192 Fort. 145

A payment receipt indorsed is prima facie evidence that the payment was made by the acceptor, therefore if paid by the drawer or indorser the receipt should bear his name. Ch 157 Peak 25

If payment is refused the holder must in general immediately protest the bill if foreign & whether foreign or inland give notice to the parties to whom he means to resort for payment & sue the discharge thereof Ch 158 202

In certain cases under the Sts. 8 & 9 Vic. c. 3 inland bills may be protested for the purpose of recovering interest & charges. Ch 160.

For the rules of giving notice see Ante / Ante notice in case of non acceptance &c for form of protest see. Ch 159

If protest only is paid the bill ought to be protested if foreign & for the residue & notice given in all cases except when waived or excused or in cases of non acceptance Ch 156 Mar 68-83

The effect of protesting an inland bill under the 9 & 10 Vic. c. 3 is only to give the holder an commercial remedy hence never necessary to protest such bill - notice without such protest is suff. Ch 161 Dow 992 Stra 910 2 Bl 1167

Protest for non payment of a foreign bill must be made on the day of refusal

A notice should be sent by the earliest ordinary conveyance. Cb 162 4 B & C 174 8 B & C 743 Keyd 126 1 B & Ad 168

In the case of an inland bill it seems notice cannot be given till the day of payment following as the acceptor is allowed the whole of the former day for payment. It should be given on the day following or the prior parties will in gen. be discharged. Cb 162 53 4 B & C 170 P 188 Doug 515 2 H & N 1362

Payment supra protest

Where foreign or inland bill is dishonoured payment supra protest may be made for the honor of the drawer or any indorser Cb 115 103 62 Lutw 891 Beav. 50 Mad 28 / If a protest non payment in case of an inland bill? Cb 102 162

The acceptor having made a simple acceptance cannot pay for the honor of an indorser being ab initio already bound by his previous acceptance. Cb 163 Beav. 51

But if he has no effects of the drawer he may after simple acceptance pay for his honor & thus acquire a remedy on the bill against him / Cb 163 115 105 122 Keyd 153 Pow & 139 1 B & C 269 Beav 458 Lutw 891 1 Esp 113 / Qu. Semb. whether he has effects of the drawer or not

He would have a remedy without a protest if to rebut the presumption of his having effects & thus to shift the onus probandi & give a remedy on the bill

Generally payment should not thus be made till after protest for non payment - without protest the payee acquires no right to recover on the bill against any of the other parties tho if the drawee having no effects of the drawer pays without protest he may recover against him

Lex Mercatoria

for money paid / Ch 103 91 203 Bean 53 Man 128 Red 176 / & semb. that a third person who has before accepted supra protest may render in the same manner against the party for whose honor he accepted & paid –

If the acceptor for the honor of the drawer or indorser has received his appropriation of the acceptance he may safely pay without protest for non payment – & as the drawer or he may accept may also pay for the honor of the drawer or indorser supra protest & has his remedy on the bill against the party for whose honor & the person last in Ch 164 Bean 48

Promissory Notes

These are direct engagements in writing to pay a sum of money to a person named in them or to his order or to bearer – they are in the nature of a bill of Exchange inasmuch the maker upon himself – Ld 18 33 Ch 165 2 B & A 467

Holden not to be negotiable at L. L. tho made payable in New Orleans & that they were not instruments on which actions would lie but were evidence of a loan without Ch 165 Ld 18 Sel 120 B & A 57 Willes 29 3 Burr 1520 4 B & A 151. £141 / Notes delivered after the time they were dated are valid only from the time of delivery – 2 Johns R 300

But notes made payable to order or bearer were put upon the same footing as inland bills of Exchange by 3 & 4 Ann made perpetual by 7 Ann he have a similar H. in B. as to notes for £35 or more – Hence the rules relating to inland bills are in gen. applicable to notes payable to order or bearer – Ch 160-7

Now settled tho formerly holden contrary that days of grace are to be allowed as on bills of Exchange – Ch 169 4 B & A 152 Ld 121 Fort 376 Bull 274 Doug 61. 8 13 & 167

A promissory note when indorsed resembles a bill of Exch. – Indorser is

Insolvency in the maker of a note will not excuse the want of regular notice to indorser - 1 Selw 378 n 57 2 Ct. 126 2 Burr 674 2 Str 1087 1246 Doug 518 8 East 245 10 Ct 316

Where a note or bill is made payable at a certain place it is not necessary in an action agst. the maker or acceptor to allege or prove a presentmt. - matter of defence after showing that he was ready at the time & place - Wolcott v Van Santvoord - Supreme Ct. N.Y. October term 1819

Where a note is indorsd after it is due indorsee is entitled to demand & notice 2 C & P 119

A ~~foreign~~ subsequt indorsee can maintain no action against any prior party to the note until he has first it or has in some way become entitled to the possn. of the Bill or note Butler v Wright 30 Johns R. part 84 & 5.

expedience - indorsees payee & the makers exception - hence it is said it may be declared on as a bill of Exch^ge / Ch 170 121 187 Burr 676 Keyd 34 3 T R 149 Willes 29 D & R 743 1 Bal 122 / qu - Except against indorsers.

Bankers notes -

There are only a species of promissory notes generally known as the 4 & 5 Ann Ch 171 Holt 119 1 Bul 283 / Not settled to be negotiable till 1 Geo - Ch 170 Willes 29 D & R 180 3 Lev 299.

Considered & treated as cash being payable on demand whether payable to order or bearer. Ch R 171 D & R 744 Doug 335 7 T R 423 Burr 1757 19

They are in gen^l transferable by bare delivery but if indorsed may be declared on as a bill of Exch^ge against the indorser - but other papers that are governed as bills of Exch^ge. Ch 171 D & R 743 1 Bal 132 4 T R 149.

Bank notes

These are their origin to the incorporating "Bank" - 1 Geo - Cap 5 Lord Mansfield 8 & 9 Lord 3 / Ch 171 / made payable on demand except part notes - considered as mere securities or evidence of debts but as money & pass in a trade under the description of "Cash" or "money" Ch 172 Burr 457 3 T R 554 D 332

But an action for money had & received will not lie against a finder of them unless he has received money for them. Ch 172 Esp 99 2 B & P 828 Cowp 197.

Neither are they a tender if objected to at the time as not being money - Ch R 3 T R 554 / Lev there are 1 Geo E 318 Doug 662 and 2 B & P 528

Lex Mercatoria

No particular form of words is necessary to a promissory note of any kind - differs if it contains a promise to pay money - hence an promissory note has come received to amount with &c or order for a certain sum operate as a promissory note. Ch 173 8 Mod 362 Str 629 786 Dy 1/2 1396 2 Ld Raym 32

A Bk. Check is substantially the same as an inland bill. 3 Burr 1 5. x 6 Mass 445

But the mere acknowledgment of a debt without words amounting to a promise will not operate as a promissory note. Eg. The memorandum J. O. U. tho it is prima facie evidence of a debt & may be given in evidence in support Ch 173 1 Esp 426

They must be payable at all events & not on a contingency & in money only & not in any collateral thing. Ch 32 173 4 Mod 242 Sd 363 Burr 823 Str 1157 1271 Cowp 227 4 T R 169 Sd 243 733 Sd 486 Bull 272 Bayl 4 Dy 1/2 667 1362 96 Contra 1 T R 782 Ryd 50. Bank notes not negotiable tho it may be declared on as a note between the original parties 7 T R 243 Ch 98

By St. 8 Et no action can be had on a negotiable promissory note but within 6 years after the right of action accrues - But the time the maker is out of the State is not to be computed as part of the time

Remedies on a bill or note

A promissory is the usual action on bills & notes & it is said to be the only remedy on the instrument, where there is no privity between the parties as between indorser & acceptor & maker. Ch 179

The holder may in gen. maintain this action against all the prior parties severally - Thus the action lies against acceptor drawer & all the indorsers - So also for a pignerative clerk, but he cannot maintain an action against any person whose name is not on the bill except

* Not greater diligence is required in the presentation of a check than of a bill of exchange 10 Mand 304 - 2 Lump 534 & whether it be presented in a reasonable time is a question of law there being no dispute about the facts 10 Mand 304

Debt lies by the payee against the maker of a promissory note expressed to be for value rec^d - 2 Bos & Pl Bishop & Young - by indorsee is indorse & L & 179. & expenditure agt the maker 10 Mand 341

The drawer of a Bill is only responsible after a default on the part of the acceptor. 2 Selw. C. 75.

If the indorsee of a bill of Ex. on its becoming due pay the amt. of it to endorsee the latter having made no demand of payment of the acceptor endorsee pays it in his own wrong & cannot charge the drawer in an action for money paid. 2 Selw. C. 75.

Holder of a note obtains judt. agst. the maker indorsee then pays the note & indorses it to another. such last indorsee can not maintain an action against the maker in the ordinary form of endorsee vs drawer. 6 Halstead N.J.R. 1914

from the person of whom he received it & thereon, on the indorsem.t not on the bill. Ch 122 80. 4 B & C 470 7 T. R. 64 2 B & P 928 12 Mod 244 408 521

So by drawer against acceptor in case of a refusal to pay. So says Ch. by drawer against drawer on refusal to accept. Ch 180 contra - Ch 91 203

Suggest. any party having been compelled to pay may maintain this action against the prior parties whose names are on the bill & whose obligations are prior to his. Ch 180 7 B & C 571 2 Salk 888.

So acceptor for the accommodation of the drawer he having no effects of the drawer if obliged to pay may have the action against the drawer but not upon the bill unless the payment was upon protest Ch 180 91 203 Kyd 156 96 1 B & P 269

So lies for a stranger having paid upon protest against the party for whose honor he did it & all the prior parties. Ch 180 Kyd 196

In gen.l action will not lie against one who became a party after the holder. E.g. C indorses to B & B indorses back to C. if C could recover against B. B could recover back of C but this rule cannot hold in favor of the acceptor or any of the parties prior to C - Ch 181 4 B & C 470

Action lies not against a party from whom Pff immediately received the bill unless he paid a valuable consider.n for it. Ch 181 Kyd 155 7 B & C 121 356 571 1 Bos. & P 54 Doug 514 2 Salk 886 10 Mod 56 1 Wils. 185 4 Bro. P. C 104 Contra 446 7 Term 200 1 Ch. R 151 2 B & C 700

If the bill be made, the acceptor his Exr. & ass. the right of action against

all the parties is extinguished - for the primary liability being discharged the secondary must be. Ch 181 Pothe 191 1 Roll 922 Plowd 184 5 43 Bac 299 2 Bl 511 3 18.

The holder may at the same time commence an action against each of the parties on the bill - but satisfaction of one will discharge the others, all except the costs - for only one satisfaction can be had. Ch 181 93 Potts 180 1 Bils 4/6 3 Atk 86 2 Show 411 Shin. 253. 4 Bl 691 Rgd 112. 198. Eq 94

If in an action against the drawer or indorser he pays the amount of the bill & costs in that action the Court will stay further proceedings in that action 1 Ch 193 4 Bl 691 Hea 513 Contra 1 Bl 749 Rgd 198 / Semble as to the acceptor - no stay of proceedings against him unless he pays the costs in all the actions as well as the amount of the bill for he is the original defaulter. Ch 193 4 Bl 691 Hea. ~~551~~ 513.

The holder having several judgts. against all may have exn. against the persons of all but he can have only one fi fa he can take the goods of one only. Ch 183 Hea 315 Eq 94

Declaration

The action may in gent. be founded on the Bill or on the consideration of it - in the latter case the Pff declares on the common counts. & for money had & received &c Ch 184 233 4 B Burr 823 2 Ell 15 2/6 Comp 822 Rep 58 1 7 97 3 Bl 674 Bac 124

Formerly it was usual to allege the custom of Merchants in the declarn. on bills of Exchange the usage now seen to refer to it - In declaring on promissory notes it is usual to allege that Deft became liable by virtue of the St of Cam. Ch 184 234 4/6 Pot 821 175 88 1542 Carth 83 2 Ld Raym 270 Rgd 177 3 Atk 323.

Where no time of payment is specified in a promissory note Pltff. must declare upon it according to its legal effect as payable on demand - since the declaration is in nff. is not merely indict on default 1 C.C. R 105

[illegible] presentment for payment. Yet the case may be for acceptance & the

A cause of action arises agt the maker on the protest for non acceptance without waiting until the bill is made for non payment. If the subsequt demand of payment & protest is void they may be demurred to or surplussaged 3 Johns R 202

In N.Y. the indorsee may sue in his own name on a note given in another State where it is not negotiable 1 Johns R 139

If the indorser of a note die before it becomes due in an action by the holder against the acceptor & executor the promise to pay must be alleged to have been made by D. ft. if by testator it will be void 2 Cowen R 171

Decln. that J. drew his bill on deft. who accepted it that J. then indorsed it to A. who delivered it to Pltff. Holbrook. Such a bill does not pass by delivery 32 E.L. 543 2 Burr 1214

Entered 279 Regd 177 3 Ellis 323.

It is not necessary in a count upon the instrument, to allege a consideration being implied nor to make profert of the instrument not being a specialty tho having some of its qualities. Ch 51 115 185 Hyd 48 181 Pk 1143 487 Sk 758 Bemb 203 1 Bia. 386 4 Bl Pk 338

If the bill or note cannot take effect according to its tenor it should be declared on according to its legal operation i.e. Payable to a fictitious payee or order should be declared on as payable to bearer - to payee of a note payable to his own order may declare on it as payable to himself. 1 Ch 48 58 185 Doug 647 Comp 100 3 Bl 178 335 643 282 481 186 631 313 569 2 194 298 2 Litt 32 2 Show 8 Hyd 108 Carth 403

It is not necessary the usual in actions on bills the instrument to allege a consideration and suff. a promise to pay - describing the bill - how Pff. & Deft. became parties to & showing Deft's liability are suff. without averring a promise - for the law raises a promise on the custom of Merchants or as has been said averring a bill is equivalent to an express promise. Ch 186 236 Carth 509 Sel 128 Raym 486 Hyd 196 Sk 528 1 Vent. 153 Sel 104 in L 333

"Be presentation" is not necessary the usual - quisque fuit per alium fecit perse. Ch 186 1 Bl 131 313 4 Bl Pk 659.

An indorsee may declare against this immediate indorser as on a bill of Ex. drawn by Deft. & payable to himself but this is not usual the bill & indorsement being generally stated as the case 1 Ch 187 120 76 4 Bl 119 Burr 674 Sk 743 May not a subsequent holder as the same if the indorsement is in blank?

In an action against the drawer or indorser Pff must in gen. allege presentment for payment but the case may be for acceptance & the

neglect of Dr Salso that regular notice was given to Deft. unless he shows notice to have been unnecessary. Cb 188 202 Doug 658 3 Burr 2670 18 Ves 712 1 Vent 46

On the common counts the instrumt. may in some cases be evidence as more evidence of the indebtedness which evidence Deft. is at liberty to select the bill being only primâ facie evidence. Cb 173 89 1 Esp 8 212 Stra 725 1 Atk 602

Where are frequently joined with the count on the bill out of extreme caution but as they may be recd. alone & supply the place of a count on the instrumt. it is seldom done unless the instrumt. is defective Cb 189 203 3 Atk 174 2 Show 56 Willes

On these counts Pff. may also go into evidence of the consideration & thus prove his case by proof - for the bill does not merge the original debt Cb 189 3 Atk 174 Ld 211 1 Esp 245 1 East 58 1 Bull 137 Stra 719.

In certain cases the instrumt. may be given in evidence to support the counts for money had & received - as in an action by payee against the drawer of the bill or maker of the note being primâ facie evidence of money lent - so in an action by indorsee against his immediate indorser. Cb 190 Stra 725 Bayl 95 3 Atk 758 12 Mod 380 Burr 1576 2 Str 1123 Burr 373 - 2 Salk 235 10 Mod 118 8 Mod 2 Ld Ch

It is said that a bill or note is primâ facie evidence of money paid by the holder to the use of the drawer or maker. Cb 191 Bayl 95

Secondly that a bill accepted is evidence of money paid by the holder to the use of the acceptor - this is denied by Eyre C.J. 1 Str 1 Atk 602 Bayl 95 Cb 191 / no actual privity between them - but it is said to be primâ facie

A remedy cannot be had upon a note merely lost but not destroyed if it has been indorsed before lost / 10 Johns. 104 /
Can suppose the note was payable to A.B or bearer & not indorsed?

A recovery for money had & received may be maintained by the indorsee of a promissory note against any of the previous parties & where the indorsements are in blank he may strike them out & fill up the last indorsement to himself nor need he show where he has paid & taken up the note that notice of its dishonor was given to him or that he paid it under a legal liability 11 Pick 314 320

If the holder receives part payment of the note before it falls due & before calling on the indorser the indorser is discharged - 2 John R 584

If was robbed of a bank note held that a def^t receiving it without due caution not knowing from whom that he could not retain it 25 Ed III 1 Rum 452

unnecessarily between them - rous et usee to be prima facie

evidence of money had & received by the drawer paid acceptor for the holder the former being presumed to have the drawer's money. Ch 191 Bos 196 1 Bl R 239 qu. 602.

But if the drawee after being obliged to pay recover against the acceptor in equity in an action on the bill he cannot. 7 Bl R 572 Ch 191 qu.

If the drawee not having effects of the drawer pays the bill in his own without protest it is evidence of money paid laid out & expended per the use of the drawer & he may recover in an action for money so paid but he must prove that he was not indebted to drawer for the presumption arising from payment without protest is that he was. Ch 191 7 Bl R 576 1 Esp R 333.

A bill or note is prima facie evidence of money had & received by the drawer or maker to the use of the holder Ch 191 Sel 283 Bos 195. Burr 1516 Nev.

Holden that acceptance is evidence of an amount stated by the acceptor with the holder. Ch 191 2 Bl R 1239.

Evidence

In Actn on a bill the evidence is governed by the pleadings as in other cases. It is necessary to prove what is essential to the right of action & no more. Under the gen. issue Pltff must prove every material allegation in his declaration. Hence he must prove that the bill was made as stated & that its legal operation is so & that Defts became party to it as stated Ch. 200 Coupe 600 Doug 667 3 Bl R 178 335 643 4 T 471 611 1 Bos 7.

As against acceptor it must be proved that he accepted either as alleged in writing Ch 200 207 Coupe 1 or if accepted by agent that he was legally authorized Ch 200 24 207 1 Esp R 14 15.

Sess. Mercatoria.

If acceptance was conditional that the event on which he has taken place
Ch 200 188 101 Stra 212 Cowp 571.

Confession by reason of his having accepted is suffn. evidence of the fact as against him the not against any other party Ch 208 1 Esp C 135 Stra 648 1051 12 Mod 309 1 Esp C 143 Burr 236 Peake C 6.

So if confession by drawer or indorser when the action is against him. confession of his signature is good evidence against him Ch 208 12 Mod 209 1 Esp C 15.

Against drawer or indorser Deft. handwriting or that of his authority against must be proved. Ch 200.9 Doug 137 6 1342 Stra 399 609

Against a person not signing by ordinary only proof is receiving that he delivered the bill to Pltff the Ld. gen. mis production of the bill is suffn. evidence of the fact. Ch 200 122 80 55 7 B & C 64. Doug 628 6 B & C 52 1 Esp 90 12 Mod 244 408 528.

And under suspicious circumstances that Pltff. not being the original payee / or some intermediate holder received it bona fide & for valuable consideration Ch 201.9 Peake C 220 Dougl 11 Bayl 116

Certified indorsee & acceptor the handwriting of the first acceptor indorser must in gen. be proved even the accepted after right of the indorsement. Deny Pltff. address no title / Ch 201. 116 209 Peake C 20 225 1 Esp C 180 1 B & C 54 Doug 630 53 3 B & C 175 Peake C 220 / 80 as against the drawer Ch 209

And first indorsement in full the bill being payable to order / a subsequent holder must prove the indorser's indorsement. as well against the

In an action on a promissory note it seems that a partial or total failure of consideration may be given in evidence by the maker to mitigate or defeat a recovery 8 Cowen 31 - especially a partial failure if there have been a fraudulent representation 13 Johns 302 = 11 Johns 548 2 Caines 146 15 Johns 230 1 Bla 470.1

Said 3 Wend 236 that fraud in the sale of a chattel cannot be shown to defeat a recovery on a note given for it unless the chattel sold was of no value or there has been a demandable offer to return it. Cited 9 J 303 2 Burrt 2 2 Stark R 98 1 Camp 190-40n 2 do 346 3 do 37 14 East 486 5 Cowen 494 ridd 122 bn 12 b 254

man attorney cannot an indorser it is not necessary to prove a

It is no defence in an action on a Bill by payee & acceptor that the bill was accepted without consideration Mond 227 3 Esp 46 1 Taunt 224. So if the endorser of a promissory note cannot depend on the opinion that he indorse for the accommodation of a prior party

Orders for goods in the hands of drawee are evidence of goods sold to drawee but orders for money are presumed to be drawn on drawees funds in drawees hands & if permit que no action against drawee unless such presumption is rebutted by Mond 324

Holder must prove the indorser's indorsement. He will against the

acceptor in an action against him as against the party indorsing
Terms no title adduced – Ch 201 116 7 Mod 87 1 Ld Ray 606 / so doubtless
against the drawer as first indorser.

But if the first indorsement is in blank it is not necessary to prove any subsequent
indorsements against the acceptor for the first may be filled up to
the holder after receiving the subsequent ones. So doubtless against
the drawer as well as the first indorser himself. Ch 201 118 88
Doug 633 617 Holt 296 Ryd 206 Peak 225 1 Esp 180 qu – Peak 220

If the first payee is fictitious no indorsement need be proved against
those parties who knew the fact at the time of becoming parties –
Ch 201 187 3 Ld Ray 74 182 481 1 Ld Ray 313 3 Ch 589 2 Esp 283 Ryd 208

When the drawer or indorser is Defdt. Pltff must prove due diligence to obtain
the money from the acceptor. Silence no breach of contract on their
part – Hence Pltff must in some cases prove presentment for acceptance
Ch 202 188 Com Ld 579 Doug 638 Burr 670 13 Ld 72 Ment 45. 18 in
qu. prove presentment for payment & in both cases in qu. notice
of refusal. Ch 202 10 130 7 Ld 581 Burr 669 2 670 Ryd 120 Sel 127
Ther 107 2 Ld 470 13 Ld 72 Ment 45.

In case of foreign bills where notice is necessary a protest for non
acceptance or non payment must be produced – a necessary proof of the
notice – But the protest proves itself – production of it is suffcnt –
Ch 210 Burr 270 12 Mod 345 Holt 297 Stra 172 Peak 274 in 10 Mod 1 Ld 1146

Exceptions to these rules. When drawee had no effects of drawer in his
hands & in certain other cases. Ch 202 68 87 111 52

In an action against an indorser it is not necessary to prove a

demand on the drawer - for their liability is co-ordinate to the holder / Ch 203 99 Cowl 579 Burr 667 1 Esp. C 334 n / the formerly thought otherwise Ch 99 Sa 131.3 Ld Ken 143.

If an indorser having paid a bill sues the acceptor drawer or any prior indorser he must prove that the bill was returned to him & that he paid it - Drawer must prove the same facts when he sues the acceptor Ch 203 Ld K 342.3

If acceptor of an accommodation bill sues the drawer he must prove in addition to Dft's handwriting payment by himself or something equivalent to being imprisoned under execution Ch 203 1 B 91 Wood 156 3 Wil 18

If drawer having been obliged to pay the bill sues the acceptor he must prove the acceptance demand of payment & refusal & the return of the bill & payment by himself / Ch 203 11 East 387 1 Wil 185 / But he need not prove that he had effects in the acceptor's hands - the contrary lies on Dfts, matter of defence - Ch 203 1 B & Ald 406 3 182 2 H Bl 612.

If Pff cannot support his count on the bill he may resort to the common counts which are founded the consideration of it. Ch 204 189 Lord 197 3 B & Ald 154 Burr 156

Rule in attorney's Bailey 1 B & P 300 3 3b Ch 204 Peak 2. / Indorsee offered to prove usury - rejected. 2 Cowper S.C. Ex 1810. Overruled in Eng 7 B & P 601 1 Esp 338 Peake 17b 1 Esp 10 85 298 17b. In Ex. Day 17 301 224 & 1 Caines 258. 17 6 Mass 434

Holden that in an action against the maker of a note by indorsee the indorser is a competent witness to prove it is paid - the formerly said not to prove it said. Ch 204 Peak. C 1.52 n 17.

If a note is shewn to be lost or destroyed it does not appear to be negotiable. Off many reasons for the Court will not presume it negotiable but if it appears to be negotiable no necessity can be shewn. 10 Johns 104 2 Lowen 303 3 Wend 546 2 do 551 1 Holt 144 6 Mas 512 2 Camp 211 22 E.L. 372. 7 B & C 90

In an action by the indorsee against maker upon a note payable to a firm it is not necessary to set out the names of the partners payees - if the description in the note is pursued in the declaration - It is suff. - neither is it necessary to aver the existence of a domicile a copartnership existing between the payees 6 Mass 505 Root vs Henry 3 Mass 229 8 Wheat 642

Where a note is payable to a firm strict proof is required that the firm 5 Mass 476 3 Camp 240 n 6 Mass 505

In an action against the maker of a note the note is evidence under the money counts Pl. th consideration be work done - ie - negotiable note - 16 Mass 8 Cow 77.

Acted in an action against the drawer of a bill (no notice having been given him of non payment) the acceptor is a competent witness to prove that he had no effects of the drawer Ch 205 1 Esp R 332.

In an action against acceptor the indorser is not a competent witness to prove that the property is in himself & that the indorsement to Pff. was without consideration Ch 205 1 Esp R 85

And it is holden that a person whose name is on the bill as drawer cannot without a release testify that he did not draw it. Ch 205 12 Mod 345 Holt 297 qu

In an action against acceptor if he accepted after the bill was drawn & had seen it the production of the bill is suffn. evidence of its having been drawn. The acceptance admits the drawer's hand writing so that in such cases proof of the drawer's name being forged is no defence to the acceptor against a bona fide holder. Semble if accepted without sight of the bill. Same distinction where the action is against indorser qu when the action is against any indorser than payee. Ch 206 Stra 442 648 946 Burr 1354 1 Bl R 390 Ld R 449 Sal 127 12 Mod 244 Holt 117 2 Bennet 82 7 Bl R 604 12 Ind Bull 270

In an action on the bill Pff. must in gen. produce the bill itself. Semble if it is lost then a copy or parol evidence of its contents is admissible Ch 205 Dyk 731 1 Cath. 446 1 Esp R 30 Peake R 165.

Payment of money into Court is an admission of Deft's signature. Ch 208 2 Ld R 374 2 Bl R 275 1 Esp R 347 Burr 2 639 1 Bl R 464

But an offer to pay part by way of compromise is no evidence. Ch 208 Bull. 236

Lex Mercatoria

When Pff claims as holder by bona fide delivery the mere production of the bill is in gen. suff. evidence of his title - but under suspicious circumstances, Ch 209. Cowper.

If he claims on a bill transferable by indorsement only he must indorsement prove the first indorsement & all the rest may be a redelivery. Ch 209. Lence

If acceptor having given bill supra protest sues, the drawer the protest Bank is primâ facie evidence of his having had no effects of the drawer Ch. 209. 163.

In an action on foreign bills against the drawer or indorser the protest is made to suff. evidence of presentment, per payment & refusal. Ch 210 Beaw 220 2 Mod. 10. 25 Bull 270 4 Mk 155 Stein 272 Peak. 74 n. Ch 160

The bill however must strictly be regularly produced on trial for the whole declaration must be proved. In an action on an Inland bill the bill itself must generally be produced for the purpose of proving presentment & refusal as well as the fact of its having been made - Bull 270 Ch 205 Peak. 165 Doug 731.

Proof that a letter containing information of the dishonour of the bill was put into the post office or left at Deft. house is suff. evidence of notice given - but to let in such evidence notice must have been given to Deft. to produce the letter. Ch 95 210 1 Mk 509 Potts 148 1 Esp 65 Burr 199 Peak. 107. Peak. 165

Debt.

Formerly Debt on simple contract was in common use - afterwards discussed on amount of wager of law & became the whole remedy recovered or nothing must have been received - these difficulties now removed. Ch 209 3 Bl 155 341 Bro. P. 155 Dy 219 2 Ro 1700 Bl 1221 Doug. 703 1 H. Bl 249 550

It is important in an action on a promissory note against the maker for the Plff. to prove that there was no consideration altho the words Value Recd. are expressed in the note 6 Cowen 454 Ind 8 Ind 379 Peake C. 440 or where a father gave the son a note without consideration the expression for value is held that no necessary to be expressed - natural love & affection no consideration in this case 18 Johns 148 17 do 301 7 do 26 2 do 53 10 do 395

Cowden Herring Ct. judgt. was taken for the whole amount demanded in the writ when the interest & principle expended that sum this judgt. being against the maker of the note was collected held that an action for the excess could not be sustained agt. any party in the note for the excess the satisfaction of the judgt. being a bar -

Debt lies not against the indorser of a bill or note or by the indorsee against the acceptor 2 Bos. 78 1 Ch R 94 106 3 Ch 360 Contra 3 Hill 53 12 Johns. 90 3 Price 253. 1 Barn & Cres. 674 1 Ld 125

Holder of a bill obtained separate judgt. agt. the indorser & acceptor. Indorser paid a part & the residue uncollected of the acceptor. held that the indorser might sustain his action agt. the acceptor for so much as he had paid 6 Mend. 290 - 6 Barn & Cr. 489 Pownal v Ferrand 8 Pick 48 Tate v Cushing 20 Johns 367

J. E. E. as President &c / 3 Mend 94 / promise to pay or if the note be signed E. F. President &c 9 Johns 334 13 do 307 or the addition of Trustees to their name does not make the note a note of the principal. It is the individual note of the signer - the contract must be made in the name of the principal 3 Mend 98 7 Cowen 453.

The action has lately been revived & is now a common action to recover money on simple contract. 1 Bos 249.

It has been holden that Debt lies not on simple contract in Eqdm in favor of payee against executor because there is not privity of contract besides the engagement amounts to a promise to pay the holder Dr. Because the engagement of the executor is collateral & to pay if the drawer does not - This seems incorrect - for the executor is first liable / Raym 185 1 Levi 185 Ch 220 Dyer 88 / & it seems that whenever the C.L. or custom raises a duty Debt lies / Ch 220 Hard 486 Com Debt C / Jdeo que

Noted that Debt lies against the maker of a promissory note / Ch 221 10 Mod 38. Bayl 94 rev. Stra 1180 / qu except by payee

Consider a claim by Pff on a third person for value received in favor of Deft. & delivered to him may be changed on both & Pff be allowed to claim to it. 1 Burr 133

Where a creditor receives a negotiable note in payment of a precedent debt he takes it subject to all equities between the origin. parties even tho he takes it before maturity - Semble if it has not arrived to maturity & he pays money or other value at the time for it - 20 John 637 10 Mass 86. 1 id 115 id 659 11 id 359

The exclusive enjoyment of ~~water~~ the use of water for 20 years in a particular way is suff.t to raise a presumption of title to such use & it is not necessary that the water should have been used precisely in the same manner or to propel the same machinery 3 Paige 577 3 Kent 442. Conrad cite 17 Wend 249 3 Mann R 272 2 Cow C. E. 5.t 10 Leigh 463 Conrad Kent E.g 1 Leigh & R 169 Geo 121 2 Ellis & Bl 162 (3 B.) 200 463 1 Paige 197 7 Ves 305 8 do 89 13 Wend 420 4 Ellis & Bl 294 6 do 257 5 do 118 2 Ellis R 673

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things or the subjects of property are by the C.L. of two kinds. Real & Personal. 2 Bl 16

Things real are such as are permanent fixed & immovable as lands & tenements all other things are personal as Money &c & chattels savoring of the realty 2 Bl 16 384.7

Things real are usually said to consist of lands tenements & hereditaments "Land" includes all things of a permanent & substantial nature "Tenements" is a word of greater extent denoting in its original & legal sense every thing of a permanent nature that may be holden whether corporeal or incorporeal / 2 Bl 16.17 1 Inst 6.19. / "Hereditaments" is a still more general term for it includes not only lands & tenements but whatever may be inherited whether corporeal or incorporeal - real personal or mixed - be an heir loom which by custom is descendable - to a cont. the benefit of which may descend 2 Bl 17. 3 Co 2.

Hereditaments are of two kinds - Corporeal & Incorporeal / 2 Bl 17

Corporeal consist of substantial & permanent objects all which may be included in the gen. term "Land" for "Land" is in legal acceptance not only any ground &c but waters & buildings so that a conveyance of land carries all buildings & structures thereon. 2 Bl 17.8.18 1 Inst 4.

An action will not lie to recover a pool or stream of water as a mere but the definition should be of so much "land covered with water" for in water one can have only a transient unfruituary property. Brown 142.

Land in its legal signification has also an indefinite extent upwards & downwards. Hence the right of action for overhanging another's land. 2 Bl 18

Real Property

A conveyance of land carries all the minerals & fossils contained in it as well as all the wood water & fixtures standing on it. 2 Bl. 18

These peculiar subjects may however be conveyed by their appropriate names excepting water a grant of which passes nothing except a right of fishing in it. 2 Bl 18 (Bract 4 b.)

An incorporeal hereditament is a right springing out of & concerning or annexed to or exercisable within a thing corporeal either real or personal. Incident springing out of land. Bract 10 2 Bl 20

But there is a distinction between the incorporeal hereditament itself & the profit which it produces - the latter is corporeal but the right to it is incorporeal & not an object of sense 2 Bl 20

For the kinds of incorporeal hereditaments see 2 Bl 21. tithes Common Way offices Dignities Franchises Corodies Pensions annuities & Rents -

A right of Common is a right which one has to a profit in or upon the land of another - as to feed his cattle &c. see 2 Bl 32 Finch 157

Piscary is the right of fishing on another's land. The rule in the case of navigable rivers & arms of the sea is that the right of soil in the bed of the river belongs to the King or lord to the Hale but the right of fishing is common to rivers not navigable the right of soil & fishery is exclusively in the adjoining proprietors but the right of soil & exclusive right of fishing in a navigable river may be granted to an individual. Doug 425 4 Burr 2164 1 Ld Ld 105 8 T 73 2 Roll 170 Sal 357 3 Lev 242 4 H & C 437 2 Bos. & P 472 1 Bur. 341 5 East 107 Dy 320 Hargr Tracts 12 Hale de jure maris, 26. 7

The same distinctions as given in the case of navigable rivers apply to the sea

A. grants B. a lease to C. reserving the exclusive right to the stream running thro it & prohibiting C. from using it for hydraulic works. Such reservation is good for the purpose contemplated by the parties to wit. to permit A. to occupy the stream for mills — 2 Wend 517 —

If the owner of real estate suffers another to purchase it from a third person & to erect valuable buildings thereon under the erroneous belief that he has good title & intentionally conceals his title he will not afterward be permitted to assert his legal title against such purchaser 2 Paige 546 1 Johns Ch 354 6 Ch R 556

So where parties agree on a division line either expressly or by long acquiescence tho, it be not the true line yet it shall not be disturbed 10 Wend 108 7 Johns 283 17 do 29. 7 Cowen 701 723 6 Wend. 467 2 Caines R 197 146

A mere misrepresentation of truth by one of the parties to a contract for the sale of land will not be suff. to authorize chancery to set aside the contract yet if any thing is done or done to mislead or deceive the other party chancery will relieve – Cf. Vandee knowing of a valuable mine on the land represented to the vendee that the land was worthless & rejd for swamp pasture & thus induced him to sell – 2 Paige 290 Cocks R. 407 13 Johns 325. 395 Lewis R 178

Shares of a turnpike company are real estate notwithstanding the right of taking toll is limited by their grant, to the reimbursement of expenses & interest – are not subject to testamentary disposition. By a testator not qualified to devise real estate – 2 Ct. R 567.

By Statute of 1818. Ch. 10. they were made personal estate.

Real Property

Shore between high & low water mark. 2 Bos 472 5 Co 107 Dy 326 Peck v. Lockwood C. E. 1811. 1 Sw 341

For other rules relating to incorporeal hereditaments in 2 Bl. Ch. 3.

Suppose land to be bounded on the sea shore or on a navigable river does it extend to low or high water mark? to low water mark I conclude

Wall is a right of going over another ground. When the public road is foundrous passengers may pass over the land adjoining the road. 2 Bl 36 & Ch.

Pltff further under them he claim by parol licence permitted deft to make a weir also Pltff mill whereby less water flowed to it than before held that Pltff. could not sue deft for continuing the weir 20 L 287 8 East 308 4 Taunt 384 5 B & C 221

The element of land is governed by the law of the place where the land lies so that one who by one law would not be legitimate cannot inherit the legitimate by the law of the country where lom - dens as to personal property 11 L 273

Freeholds of inheritance

An inheritance absolute i.e. a fee simple is an estate in lands & tenements one holds to himself & his heirs generally & absolutely without restriction to any particular heirs. 2 Bl 104 n. 6 Litt. 1.

"Fee" has the same meaning as feud or fief which in its proper sense is taken in contradistinction to "allodium" the latter signifies an estate which one has in his own right & holds of no superior. 2 Bl 104 n. 7

"Fee" then is an estate holden of some superior in whom the ultimate property of the land resides & in Eng all lands are holden either mediately or immediately of the King who alone has the allodial estate or the absolute & entire dominion. 2 Bl 105.

By St. Ct. 234 the tenure of land holden by one & his heirs is declared to be allodial.

An Eng subject has only the usufruct & not the absolute property of the soil the highest estate he can have is expressed thus "he is seised thereof in his demesne as of fee" i.e. it is his demesne or property for he holds it to himself & his heirs forever. But his demesne is not absolute but qualified hence the words "as of fee" - But the word "fee" is now retained used in its original sense as contradistinguished from "allodial" but as denoting the continuance or quantity of estate. 2 Bl 105. b

"Fee" then in its ordinary acceptance signifies an estate of inheritance & when used without any adjunct or with the adjunct "simple" is used in contradistinction from a fee conditional at C.L. or a fee tail by St. 2 Bl 104

A fee in this sense may be had in any hereditament corporeal or incorporeal - but if an incorporeal one he is said to be seised "as of fee" not "in his demesne as of fee" - for he has no property in the demesne or corporeal

Each adjoining proprietor on a stream is entitled to have the water flow undisturbed in its natural manner & altho, there may be enough for both with present use neither is obliged to prevent its waste for the benefit of the other 10 Mend 260 10 Ct 213.

Land bought for partnership purposes considered as personal estate during continuance of the partnership unless there also can appear that it should be valued & sold when it is considered as personal 3 Bro C.C. 199 Ripley v Waterworth 7 Ves. 425 Bell v Phyne 7 Ves 453. Robinson v Shaw 9 Ves 800 Foley v Davies 230. 242 that all property involved in a partnership concern ought to be considered as personal property see Gow 1 Swans 495 / 4 C.E. Ch 817 7 do 208 9 do 118 10 do 60 where real estate is purchased with partnership funds for partnership purposes it is considered as personal property

subject but merely a right derived out of it. 2 Bl 166 20 Litt fs 10

The fee simple or inheritance of land or tenements resides & is regularly vested in some person & cannot be in abeyance i.e. in expectation 2 Bl 107 Co Litt 342 b 26 213 Litt 26

But several inferior estates may be carved out of the fee. Eg. a lease for life or years the fee simple remains in the & his heirs & after the determination of the lease the land reverts to him or his heirs. 2 Bl 107

If a grant is made to a sole corporation & to a person & his successors the inheritance according to 2 Bl. 107 & Litt fs 646 is always in abeyance each successor being unknown & during the immediacy of his predecessor dead. The grant is to a corporation sole & if the whole estate is not conveyed does it not remain in the grantor? 2 Bl. 107. Co. Litt. Grants one of the persons first the successor after induction may assume all the rights which accrued from his predecessor's death. 2 Bl 107 Co Litt

To make a fee inheritance by grant the words heirs is indispensible for a grant of land to A forever or to A & his assigns forever carries only an estate for life. But words of perpetuity are not necessary this rule is consistent of general statutes. 2 Bl 108 107 Litt fs 1

But this rule does not hold as to devises as to which a more liberal construction prevails. As a devise to A in fee simple or to A forever does not carry a fee simple for the intention to give a fee is manifest & that governs in devises Long 322. Bl. R 672 2 Bl 381 4 Burr 2570 Fearne 115 Cont 550 Terms of a devise of land to A & his assigns without words of perpetuity - for have no such intention appears

To a devise of all my estate & having a fee simple passes a fee. 1 Bat 236 Coup 659 1 Ves 412 2 Ves 657 4 Ves 93 3 Ves 362 B 34.67 502 Coup 805 1 Ves 131 223 2 Ves 444 1 Ves 228 2 Ves 48 3 Atk 486 Doug. 734.

Some have taken a distinction between a devise of "all my estate" & "all my estate lying at such a place" & holden that the latter is descriptive of the subject only & therefore passes but an estate for life. Coup 306 but this distinction seems not to be supported. 1 Ves 411 & Atk. 37 1 Ves 228 2 Ves 644 Coup 355 2 P Wms 324

But on a devise of "all my estate in the counties of L. qu. 1 Ves 228. Q.

To a devise of all my effects real & personal passes a fee in the real property. So a devise of "all & every worth". Coup 299. 1 East 33 3 Ves 516 2 Ves 343 1 Bro C 437 8 Ves 66

But the word "hereditaments" does not of itself carry a fee being descriptive of the subject only. 5 Ves 558 3 Ves 356 B 176 8 Ves 497 Ed. 239 1 Bro 558

"All my property" prima facie passes a fee Dent. 2 Ves 221

But word "legacy" may signify a devise of real estate where the intention is manifest to pass the realty & may carry a fee. Doug 39 Ves 182 Burr 268 1 East 37 n 5 Ves 716

Can a devise of "lands" the devisee having a specific number acres a legacy will carry a fee otherwise the devisee may be a lessee. 6 Co 16 2 Ves 343 Pow D. 502 Ty. 281 93 3 Ves. 49 1 Bro. 30 3 Burr 1623 3 Ves 358 2 Ves 218

But a devise of lands the devisee having a certain sum out of the profits passes only an estate for life & the devisee cannot be a lessee. 6 Co 16 Coup 239

"I leave a legacy to st. all the property of whatever
"description I am possessed of or have claim to" i.e. or
claim of all testator's estate whether it be a fee or
less estate 25 L 408

2. Vk 343 3 Vk 358 4 East 87 3 Burr 1818. 23.

Accrue of "land" of a given annual value the Dec.ee paying an annuity Obj than the annual value proves an estate for life only ~ causa supra
5 Co 16 5 Vk 15 3 Burr 1533. 1818. 23. 2 Bl 381.

How far gen.l intervening mesne in a devise operate to carry a fee. vid. 5 Vk 563. 13. 16 8 Co 64.7 3 Burr 1525 Cowp 299 3 Co 66 3 Co 294 Salk 157 Doug 780. 39

Attestation of a will by three witnesses is not req.d to shew an intention to pass a fee. 1 Vk 16 1 Ld 220 7 East. 97. ~

A devise of the rents & profits of lands is tantam.t to a devise of the land itself Cowne 349 2 Ves 145.

The word "heirs" is not necessary to pass a fee by fine or common recovery for by these a fee passes by act & operation of law. 2 Bl 108 334.7.

So in a grant of land to a Corporat.n is not necessary or proper for the purpose of passing a fee "sans pur" such as the clause of "heirs". 2 Bl 108

In a grant to a Corpor.n aggregate the word "heirs" or "successors" is not necessary for the such grant is strictly for life only it is equivalent to a grant of the fee as an aggregate Corpor.n never dies & also a grant to the King for in judg.t of law he never dies besides his prerogative never dies superseded with the rule. 1 Bl 240 2 Bl 84 2 109

"Heirs" is regularly a word of limitat.n respective of the quantity of interest given & not of description or purchaser Ex. Land limited to A for life rem.r to his heirs. A takes a fee simple. If to A for life rem.r to B for life rem.r to the heirs of B. A takes a fee simple subject to the

intermediate rent. & violation of the rent. gets immediately in the
In the first case it acts in poss.n at the creation of the estate vide the latter
it is not entitled in poss.n till the determination of the intermediate rent. &c
So also of the word "heirs of his body" in mutate limitation. Burr. 38. 1106
7 Mod. 533 2 Ch. 320 2 P. 82 204 2 Bl. 172 Ch. Prec. 21. 31 42. 46 70 82 90. 92
101. 107. 112 114 125 294 1100 79 P. 93 109 2 Ver. 411 417 2 Ind. 22.

"Heirs" being regularly a word of limitation a devise to the "heirs of A" conveys
no estate unless a disclose the testator. But if from other means it appears
that the word "heirs" was used as a word of purchase or description the
heir or heirs apparent will take. Cowp. 313 2 Vent. 312 Ray 332 Pl. Co.
220 1 Vent. 421 Pollex. 457 1 Ved. 343 Bl. R. 1100 Burr. 1100 1 Bro. C. 450.

An estate given to one & his heirs cannot be qualified by an abridgement
of any of its legal qualities. Ex. That it shall not descend. 1 Ind. 13
1 Ve. 61 Doug. 329.

Limited fees are such estates of inheritance as are clogged with conditions
or qualification. & are of two sorts. Base or qualified fees & fees conditional
at C. L. most of which in consequence of the St. de donis have become
estates tail. 2 Bl. 109.

A Base fee is one which has a qualification annexed & which must determine
when the qualification is at an end. Ex. A grant to A & his heirs tenants of
the manor of Stoke. whenever the heirs cease to be tenants of the manor
the grant ceases. 2 Bl. 209. 1 Ind. 27.

A fee Conditional at C. L. is a fee restrained to some particular heirs
of the grantee. Ex. Heirs of his body. 2 Bl. 109.

It is called conditional because of the cond.n expressed or implied in the

grant that if donee died without such heirs the land should revert to the grantor — but if the grantee has any issue the estate was considered as absolutely the performance of the condn. for three purposes — 1st. To subject the land to forfeiture for his treason — 2d. To enable him to alien — 3d. To enfranchise him to charge the land so as to bind his issue — But if donee dies not alien & his issue died before him the land on his death reverted to the donor — for by the terms of the grant it would descend to the heirs of his body only & if he left issue the fee became absolute in them — 2 Bl. 111. 1 Inst 19 2 33 —

In consequence of the first above mentioned construction of these grants the St. 13. Ed. 1. called the St. de donis was passed enacting that the will of the donor should be observed & that the tenements should at all events go to the issue if any & if not should revert to the donor. 2 Bl. 112

In the construction of this St. the Judges held that the birth of issue was no performance of the condn. but they divided the estate into two portions viz — a new kind of particular estate called a fee tail which vested in the donee & the ultimate fee simple expectant &c vested in the donor which latter is called a reversion / 2 Bl. 112 / No remn. after a fee conditional / 2 Ves 170 2 Bl. 113 — 1 Co. 83 a. / & thus estate tail originated in the St. de donis Litt. p. 13 2 Bl. 112

The only word in the St. which designates the subject of this species of estates is "tenements" which includes all corporeal hereditaments as well as all incorporeal ones which savor of the nature of tenements &c 2 Bl. 113 1 Inst 19 7 Co 33 —

But annuity which charges the person only & not the land of grantor cannot be entailed for it is not a tenement — 2 Bl. 113 1 Inst 144

Gen estate on condition vests if the condition be substantially
and effect performance — a literal performance need not be
shown 15 Penn 290 65 R 732.

An Annuity then if granted to one & the heirs of his body is a fee conditional at C.L. alienable after issue born & admitting of no rent. 2 Bl 113 1 Brut 19 2 Co 170 1 Bro C 325

A mere chattel cannot be entailed, nor can a grant of it to one & the heirs of his body create a fee conditional. Such grant gives the donee with the entire & absolute interest & admits of no rent. 2 Bl 113 n 19 1 Brut 20 1 Bro C 274 2 Bl 398 Pow D. 243 10 Co 78 8 Co 95 Fearne 304. 342 n 3 P.W. 259.

But by the words which in the limitation of real estate would create an estate tail by implication a rent in a personal chattel may be limited over after a life estate by way of executory devise provided the contingency on which the event shall depend if at all within the time prescribed by Law to be a devise to be & if he die without issue living to be &c. 3 P.W. 256 Fearne 359 1 P.W. 663 1 Ch 593 1 Bro 276 n

Express words of entailment may by other words be so restrained that a subject limitation of a chattel interest will be good by way of Executory devise Exp. Devise of a term for years to A & the heirs of his body & if he dies without issue living A then to B. Fearne 352 7 Ind 225 P.W. 668 2 Ch 720 Pow D 232. 237 n

An estate tail at sufferance may be entailed by implication. Ex. Devise to A & if he dies without issue of his body to B. B. Devises in a deed. Fearne 170 300 3 Ch 83 2 Bl 115 88 n 9 Co 127 P.W. 605 3 Lith 398 Lith 343 Bro C 525 2 Atk 308 Comp 234 Bro C 413 Cons 539

So a devise to A & his heirs forever & if he die without heirs of his body to B. A takes an estate tail. So if the words were "if he die without heirs" if the rent run into a collateral heir of the first devisee

Freeholds of inheritance

Seame 170 301 - 3 Ll 276 3 Ll 145 5 337 8 5. 211 Cowp 234

Estates tail are gent. & special - there are divided into estates male gent & female gent. - male special & female special. Litt. fs 14 26 28 2 Bl 113.

In case of tail male the descent must be directed wholly by heir male & so on - Hence in case of tail male neither female nor their issue can inherit 2 Bl 114 Litt. fs 55 24 1 Burr 23

As the word heir is necessary to create a fee by grant so the word body or some other word of procreation is necessary to create a fee tail by grant 2 Bl 114 1 Burr 20 2 Bl 381.

If either words of inheritance or words of procreation are omitted in a grant a fee tail will not pass - by a grant to A & the issue of his body & an estate for life only passes there being no words of inheritance & contra A grants to A & his heirs male or female passes a fee simple & not a fee tail - no words of procreation 2 Bl 115 Litt. fs 31, 1 Burr 27 5 Ll 338.

The words are taken most strongly against grantor & the word "male" is rejected - 2 Bl 121 1 Burr 26. 25

But a grant in the reversion by the King is void - for as against him the word "male" cannot be rejected & then the estate would be neither a fee tail or a fee simple & the Law does not allow of the creation of any new species of estate - 2 Bl 121 5 Ll 338

The same words in a devise create a fee tail for here the intention is to govern & may be inferred from any word. Doug 322 2 Bl 381. 5 Ll 338 Kirby 175

Either an express devise or limitation of lands to one for life if the same is given or limited to his sons or his children & their heirs or heirs of their bodies he takes an estate for life only & the sons or children take the same in fee or tail
4 Price 296 1 Cobb R 263 n 3 Mad 503

If by the will the estate is not limited to the father for life with the remd. to his children but is given to him & his children if he have children at the time of the devise he & they take as tenants in common & survivorship if he have none he takes an estate tail 1 Cobb 16 4 Price 297

limit by devise an estate tail may be made without the word "heirs" & Co. "to A & his posterity" or "to A & his children" he having no children at the time of the devise - for the intent is that they should take tho they cannot take immediately because not in esse - merely way of rent - for that would be against the intent & the devise being immediate - 6 Co 17. 2 Bl 115 Cha. Doug. 306 - 4 T 1 Ves 145 5. 1 Co 1 Burth 219. 1 Ven. 221 231. 1 Str 214 2 Vern. 545 - 4 Price 296

But under a devise to A & his children he having children at the time he & they take as joint tenants i.e. A & the children then in esse 6 Co 16 Cro. J. 743 - 1 Cart 252 Comp. 314 1 Ver 119.

If one devises to A & after his death to his children he then having children he takes an estate for life & they a rent for life - for the intent is that they should not take immediately & they can take by way of rent & no other words of limitation are nec to make a fee tail & his after born children will take with the others tenants in Common - if the word were the same & he have no children at the time - for the reasons respec. 6 Co 16 Moo 397 Burt 9 2 Vern 545 Doug 306 Comp 309. 14 Mod 226 2 Str 343 1 Ven. 13 Doug 415 - 17. / & in the last case every child that A may have will take in rent 6 Co 17 Comp 314

If an estate is limited to A & the heirs female of his body his female issue will inherit the heir a son & the female issue are not heirs gen. 1 Burt 24 4 Ven 35

But it is a female, holden that if an estate were limited to the heirs female & on his underman & he had a son the daughters could not take not being his heirs / 1 Burt 24 Hob 29 1 Ven 216 3 Bal 336 2 Mod 1. Str 54 Vaum 22. 147 / But this seems not to be law 1 Burt 184 5 Ven 215 1 Ford 442

Freeholds of inheritance

The incidents to a tenancy in tail are 1. That the tenant is not liable for waste 2d That the wife shall have her dower 3. The husband shall have his curtesy 4. That the estate may be barred by fine or recovery or by lineal warranty descending with assets to the heir 2 Bl 116 1 Bnt 244 2 Bl 348 Co 300 a

Estates tail were first holden to be barred by fine common recovery in the 12 year of Ed. 4 a made forfeitable for treason by 26 Hen. 8 R. declared to be barred by fine by 32 Hen 8. 2 Bl 116. 18

The right of the tenant to levy a fine or suffer a recovery is inseparable from an estate tail & hence a condn in restraint of this right is void 4 Kent 13. P. 51

By St. Ct. 43 estates tail become fee simple estates in the immediate issue of the first donee in tail a void fee conditional at C. L.

Freeholds not of inheritance are estates for life & these are either created by conveyance called ~~[illegible]~~ conventional or by operation of law called legal 2 Bl 120.

Conventional estates for life may be for one's own life or for the life of another or for more lives than one & legal estates are always for the life of the tenant only. 2 Bl 120.

An estate for the life of another is usually called an estate pur autre vie If limited to one & his heirs & the tenant died living cestui que vie the heir takes it as special occupant. If not thus limited it vests in the grantee & to the first occupant. See 29 Car 2 & 14 Car 3 — it is made devisable if not devised it goes to the personal representatives 2 Bl 258 1 Inst 41 By H. C. 42 it is also made devisable here doub.

A life estate at will cannot be transferred without losing of being it being a freehold 2 Bl 144 20 Lilt. p 59.

A gen. grant not defining any particular estate passes an estate for life unless if a grant is made to J. S. the grant does not pass a fee for want of words of inheritance tho it must be construed to be an large an estate as the words will bear which is an estate for life unless a grant not defining any specific estate or a grant for terms of life generally passes an estate for gr. life if the grantor had power to make such estate for it is more beneficial than an estate for the life of another 2 Bl 121 1 Inst 3 b 42

Any estate except those of inheritance at will or by sufferance that has no determinate period of duration but may last during the life of the tenant is a life estate Ex. Dower woman during widowhood &c 2 Bl 121 1 Inst 42. 3 Co 20 a

Freeholds not of inheritance

An estate for the life of the tenant is usually granted for the term of his natural life an estate for his life generally may be determined by his civil death but when they grant to his civil death does not determine the estate 2 Bl 121 2 Co 18 1 Burr 132. 1 Bl 131.

The incidents to this estate which are applicable to the legal as well as conventional kind are. 1. Tenant if not restrained by cont. or agreement may of common right take upon the land reasonable estovers, viz. necessary wood for the use or furniture of the house or fences or hedges &c. 2 Bl 35 122 1 Burr 53 But not to cut timber for other purposes or to use waste or for it is not necessary to the enjoyment of the estate 2 Bl 122 1 Burr 53

2. Not to be injuriously any sudden determination of his estate except by his own act. Hence if after sowing & before harvest tenant dies his Ex. shall have the emblements or for actual Dis &c 2 Bl 122 1 Burr 55

So if cestui que vie dies between the time of sowing & harvest the tenant shall have the emblements &c also if the estate is determined by the operation of law Ex. Seizure to husband & wife during coverture & between sowing & harvest they are divorced a vinculo &c husband shall have the emblements 2 Bl 123 5 Co 116 / Seems if determined by the act of the tenant Ex. Forfeiture for waste &c 2 Bl 123 1 Burr 55

3. Under tenants or lessees of tenants for life have the same & even greater indulgences Ex. If tenant for life determines the estate between sowing & harvest his lessee shall have the emblements for he could not prevent the determination of the estate. 2 Bl 123 124 1 Burr 55 Cro E 461 1 Roll 727

Ex. C S the under tenant might on the lessor's death leave the

May take reasonable fire wood for the use of his tenants if it works no injury to the inheritance & it is not necessary that it be burned on the premises 1 Paige 573

mention & said the payment of all rent arrears after the last day of grace for payment — Tenancy now by St. 11 & 12 c. 2. he pays for rates 2 Bl 121 11 Co 12

If any tenant for life undertakes for years & dies the lease is determined by his death unless precisely confirmed by the reversioner. 2 Bl 325 Litt. p 55 3 Ba 377 Pepl. 115 Co. 482 13 K 85.

Legal estates are of three kinds — 1. Tenant in tail after possibility of issue extinct — one to whom an estate in special tail has been limited & the person from whose body the issue was to spring dies without issue or having left issue which become extinct — In this case the estate which was originally an estate tail cannot possibly descend 2 Bl 124 Litt. p 82

This estate can only be created by the act of God & not by grant or any other mode of conveyance. Hence if an estate is limited to one & his wife & the heirs of their two bodies & they are divorced & neither of them have this estate be tenant merely during life. 2 Bl 125. 1 Inst 28

He can suppose the possibility of issue to exist till extinguished by the death of one of the parties — 2 Bl 125 Litt. 39 1 Inst 28.

This estate is of a mixed nature partaking partly of an estate for life & partly of an estate tail. — The tenant is like a tenant for life in this that he forfeits his estate by aliening in fee — & he is like a tenant in tail in is not being punishable per waste. 2 Bl 125 1 Inst 28.

But if he cuts down timber the property in it is not his but belongs to the person living at the time who has the first estate of inheritance in the land — Suppose the immediate remd. is to J.S.

Freeholds not of inheritance

in fee or tail - he being in a fee is entitled to it - But suppose the first remr. to J.S. / unborn at the time / in tail remr. to B. in fee / in tail or in fee - qu. Sit Ex. 2 Pl. R. 240 2 Bl. 125 Ch. n.

In gen. this is regarded in law as an estate for life only & the tenant may exchange it with tenant for life - 2 Bl. 126 323 -

By Curtesy

When a man marries a woman seised of an estate of inheritance & has by her issue born alive & capable of inheriting the estate - he surviving her is tenant by the curtesy - i.e. tenant for life of the land / 2 Bl. 126 Litt. p. 35 § 52 / Four requisites are required P.R.D.R. 27

1. Marriage - which must be legal - hence no legal right - Hence the husband is not entitled of the wife was in idiot - for there was no legal marriage - 2 Bl. 127 30 Plowd. 263 1 Mod. 30 -

Seisin of the Wife. This must be an actual seisin at her death - a bare right of posn. is not suffn. - Hence entry can be made in a remr. or reversion. 2 Bl. 128 2 Leg. 26 Bell 158 1 Mod. 11.15 Cowp. 3 Day 166.

Exceptions in some cases of incorporeal hereditamts. where actual seisin is impossible. 2 Bl. 147 1 Mod. 29.

3. Issue born alive - hence not capable of inheriting / 2 Bl. 127 1 Mod. 29 / & during the life of the wife - hence at her death the husbd. has no issue & the land must descend to the child in ventre. 2 Bl. 127 1 Mod. 29.

In Gavelkind land husbd. has curtesy without issue

The issue must be capable of inheriting the estate - Hence if the

The rule that there must be seisin in the wife applies only to those cases where an entry is necessary to perfect her title as where she is heir in remainder not where she takes by a conveyance the legal effect of which is to perfect title & seisin as in case of a deed

4 Day 298

3 Hill 186 8 Paige 643

If the husb. after marriage should leave for years all his estate by the Eng. law the wife must be endowed tho the term has not expired & after her estate is at an end the lessee shall again have the land of which she was endowed. So Denk. in Ct. Co. £46 R D Rk 40

L. So the alien wife of one naturalized can not be endowed 1 Bouvier 95

Vide also 1 Bouvier 95. 7 Co 25. 2 Johns Ch 29

wife is tenant in tail male & has only female issue the husb. has no curtesy - The time of the issue's birth however is immaterial if during coverture either before or during her widow is of no importance or whether it be dead or alive at the time of her widow's death. 2 Bl 128 1 Burt 29.

The husb. may have an estate by the curtesy in the wife's equity of redempt. even on a mortg. in fee. Pow. M 112 1 Ath. 463 -

By the birth of the issue the husb. becomes tenant by the curtesy initiate but his estate is not consummate till the wife's death. 2 Bl 28 1 Burt 30 -

Dower

If an husb. seized of an estate of inheritance dies his widow has a life estate in one third part of all the lands & tenements of which he was seized during coverture & which any issue that she might have had would by possibility have inherited - 2 Bl 129 Litt. § 36 - R. D. R. 39

She must have been the actual wife of the deceased at his death. If divorced a vinculo she cannot be endowed - Semble a divorce a mensa for this does not dissolve the marriage. 2 Bl 130 1 Burt 32 -

If the husb. was an idiot she can have no dower - for there was no legal marriage - 2 Bl 130 1 Burt 31

Formerly the C. D. is forfeited by the treason or felony of the husb. the this rule was abrogated by 1 Ed 6 - 1 Burt by the 5 & 6 Ed 6 the widows of traitors in gen. are barred of dower but have no such th. in Ct. for in case of treason outlaw. are forfeited by the Con. U S Art. 3 Sec 3

An alien cannot be endowed except by special act for at C L. no alien was held bound except the queen was not - 2 Bl 131 1 Burt 31

Freeholds not of inheritance

The wife must be above nine years old at husb.s death or she cannot be endowed 2 Bl 131

The estate in which the wife has dower must be one which any issue she might have had could have inherited. If a man seised in fee having a son by the first wife married second she shall have dower for if the issue of the first wife had died the issue of the second might have inherited as heir to him & the heirs of his body by his first wife for the issue of the second could in no wise have inherited. 2 Bl 131 Litt 53

A reversion in law or right of present prof.n in the husb. is suff.t to entitle the wife to her dower unless it is not in her power to bring the mind to actual prof.n 2 Bl 131 1 Inst 31 Co L 603 - R D R 39.40

Taking of husb. for any term of time however short is suff.t unless it be in the same act which gives him the estate transfers it to another & dower land is granted by fine & recovered back by the same fine 2 Bl 132 1 Inst 32 2 Co 67

In Mass. V. R. & Eng. if husb. alien the land during coverture it is still subject to dower - 2 Bl 132 1 Inst 32

1 Bl. Ch. 237 she has dower only in the lands of which the husb. died seised either in fact or law R 40 1 R Ab 50

In Eng. the wife is not entitled to dower in the husb. equities of redemption R. on a mortg.e in fee by husb. before marriage, for it is considered as analogous to a settlement. Pro 321.35 2 Ba 123. 5th 403 1 Cath 606 3 P. Co 229 Bull. 138 2 Cath 523 1 Bl R 138.61 1 Bro C 326 - Contra - 2 P. Co 700 P. Ch 137 2 Bl 138 Co L 190 Hard 466

The widows right to dower is pecuniary to the right of heirs or creditors, 1 Root 217.8

The right to dower is an incidental interest in land & recognized by law yet it is a right resting in action merely & cannot be so alienated as to enable the grantee to bring an action in his own name, altho it may be released - 17 Johns. 169 1 Bowen 96 -

R. 53. grew in -

R. Dk 40

But a jointure is not barred by elopement. R. 41. 13 Ves. 445. 3 Pl. 259

So it is in Ch. barred by an agreement to settle a jointure R. 42 3 Bro. P.C. 492.

If a jointure settled on an infant wife is lost to dower. R. 42. 3. 3 Bro P.C. She is capable of intermarrying the marriage then she not capable of making a contract incident to the principal.

Freeholds not of inheritance

In Ct she is entitled to dower in her husb. equities of redemptn. as he died by d. C. 1 Cath 103 1 Ch R 160 1 Salm R 290 Sp. 248 1 Ch R 559

And in Eng. mortgs. wife has dower in the reversn. expectant on her husbs. mortgs. for life or years the made before marriage. Pow MW 319 Pa. Ca 133 2 Vern. 403.

Dower by the C.L. must be assigned to the widow by the heir or his guardian for he becomes tenant of the whole by entry & the widow is in nature of an under tenant to him - If the heir &c does not assign or assign it unfairly she has her remedy at law & the sheriff is appointed to assign it 2 Bl 136 Bract 345 - Pow therewith in Ct. id. 240

Dower is lost in Eng. by elopement with an adulterer unless the husb. become reconciled to her - By total avoiding - By living an alien - By treasons of husb. in most cases - By detaining the title deeds from the heir till she restore them - By aliening the land - By levying a fine or suffering a recovery & by jointure 2 Bl 136 Bract 34 - RDR 40. 41 -

In Ct she is not barred by avoiding unless she were the procuring cause of the avoiding - nor by the treason of the husb. St. 239 Coulds Lit 3 f 3 -

/ Hawkes says that in Ct if J.S. be divorced from one wife / he being the guilty party / & die living the second & first wife the first shall have her dower of one third of the whole estate - & the second shall have dower of one third of the residue /

The wife may be barred of dower by a jointure - It has been questioned whether under an St 239 a jointure in fee or

Freeholds not of inheritance

consist of personal property in words "some other estate" – Decided by S.C. that it cannot be devised or bequeath.

All estates for life are forfeitable not only for treason &c at C. L. but also for waste & alienation in fee or tail or for the life of another 1 Bl 26 7 Litt. 415 1 Inst 251 / 1 Bur 267 but not by a conveyance in fee &c by Bargain & Sale or by Lease & Release. 2 Sanc. 60 1 Mod 157 2 Bl 171 Ch.

As against a purchaser the wife is entitled to dower according to the value at Hus.ds decease – as against the heir according to the value at the time it is set out – 2 Johns Ch 484 Humphrey & Phinney – Co. L. 32 a 2 Saund 45 b.

If there be a bequest to wife in lieu of dower & she accepts it she is barred of dower – but if not stated in express terms to be in lieu of dower or it is to be necessary implication the terms be so – or if the bequest be not inconsistent with the claim of dower. 4 Bacon 288 2 Johns Ch 450 2 Ath. ex p. 444. 1 Dall. 418 1 Peate 424 1 Johns 307 10 do 30

A man who holds under a lease holds as he is bound by the terms of the lease 25 L.J. 253 4 Camp 275

Tenant from year to year is not liable for permissive waste nor bound to make good fence under a term of the premises 25 L.J. 253.

Tenant for a year has no right to sow a horse a winter crop 13 Ct. 62

There are of these kinds id 2 Bl 140

For years - is an estate in lands &c for any determinate time, as for twenty years or even 1 month or one year being the shortest term of which the law on this subject takes notice. 2 Bl 140 Litt. s. 58 67.

By a "year" in law is meant a Calendar or Solar year. By a "month" at L.L. is meant a lunar month (Sens in Law Month. Lute so twelve months mean forty eight weeks only - but a twelve months means a Calendar year. & in gen. the law takes no notice of the fractions of a day. 2 Bl 141 1 Brit 133 5 Co 61

Incidently Lessee's interest might be defeated by a common recovery suffered by tenant of the freehold - Sens 2 Bl 142 1 Brit. 215

Every estate which must expire by its own limitation at a certain prefixed period is an estate for years. Hence it is frequently called a term - its duration being limited - 2 Bl 143 1 Brit 45

It is said that it must have a beginning certain & a certain end in time but it has a certain beginning of course - for if no day is named for its commencement it begins from the making or delivery of the lease - & as to its duration id intimat the lease a lease for so many years as A B shall name is a good lease for years 2 Bl 143 1 Co 35

But a lease for so many years as A B shall live is void - for the duration is neither certain or capable of being made so while the lessee continues - neither is it an estate for life because there is no delivery - or so intended - 2 Bl 143 1 Brit - 115

But a lease for 20 years if A B shall so long live is good - for there is

Estates less than freehold

a certain fixed period beyond which it cannot endure tho it may sooner determine — It is a lease for 20 years determinable

It is only a chattel interest a personal estate inferior to a freehold for life — Hence livery of seisin is not necessary to create or transfer it of course it may be made to commence in futuro — Sewis of a freehold 2 Bl 143 5 Co 94 1 Inst 45 Hence the lessee is said not to be seised but possess. of the term or chattel interest for seisin is the possess. of the land or freehold. Co Lit 2 Bl 144 1 Inst 45

The word "term" is used not only to signify the duration of the lease but the estate or interest of lessee — Hence the term is said to expire before the expiration of the time fixed for the duration of it 2 Bl 144 Thus if a lease is made to B for three years & after the expiration of the term to B & he forfeits at the end of one year B's ment. takes effect immediately Sewis if the ment. were limited after the expiration of three years 2 Bl 144 1 Inst 45

Tenant for years unless restrained by special agreement has the same estate as tenant for life 2 Bl 144 122 3b. 1 Inst 45 Co Lit

If the estate determines at a certain fixed period between renewing & lessee he is not entitled to them — for he takes when he takes the lease the time of its expiration — Sewis if the lease is determinable on a contingency before the expiration of the period limited — Ex. Lease for 20 years by tenant for life who dies within that period 2 Bl 145 1 Inst 55 Sewis is determined by the act of lessee or by forfeiture 2 Bl 145 1 Inst 55

At Will

Lease at will is defined to be one holden at the will of lessor — It is however determinable at the will of lessee or when lessee 2 Bl 145 Co Lit 1 Inst 55

A sale conveyance & delivery of the Corpus of land does not pass the grain growing thereon Lawrence 1 Penn. R 471 1 Rawle 353. on the ground that it is a chattel saisie 1 Ld 303 2 John 462 n 9 do 104 3 Law Intell 418 that it does pass 3 Johns 222 Cotes Lessee 1 Leigh. Ri. R 297 Roberts Ex. 126 2 Bl 404 12 Q

Estates less than freehold

The lessee has no certain indefeasible estate as the lessor may determine it at any time. 2 Bl 140

If lessor determines it between the time of sowing & harvest the lessee shall have the emblements. Semble if determined by act of lessee. 2 Bl 146 1 Mod 55

The estate may be determined by the express declarn. of the lessor that lessee shall hold no longer which must be made upon the land or notice of it must be given to the lessee. Only lessor exercising any act of ownership by entering & cutting timber or by taking a distress & impounding it upon the land &c. 2 Bl 140 1 Mod 55 1 Saunders 248. 1 Roll. Abr 2 Leo 80.

So the estate may be determined by lessee's assigning his interest or by surrendering back &c or by the death or outlawry of either party 2 Bl 146 1 Mod 55 12 & Co 116.

If lessor determines the estate lessee has the right of removable ingress egress & regress to take away his effects. 2 Bl 147 Litt § 69

If rent is reservable quarterly &c & lessee determines the estate he must pay the rent to the end of the current quarter. Semble lessor determines the estate 2 Bl 147 Fol 414 1 Ind. 330.

But of late those that were formerly called estates at will have been construed into tenancies from year to year so long as both parties please especially if an annual rent is reserved 2 Bl 147 8 Mod 3 Esp 460 18 R 1173 They are now so construed in all cases 2 Bl 145 Cro 8 Mod 3 Esp 460 2 Burr 1004. Semble.

The difference between these & strict tenancies at will is that the former cannot be determined at the pleasure of either party except at the end

Estates less than freehold

of the year nor then without reasonable notice to the other which notice is understood to be half a year - & then either party die notice is necessary 2 Bl 147 - 1 Ath 157 - Sp. 64.85 Dr. 360 8 Ed. 2 Ch. 430. 139 2 Bro C 161 E. 1160 3 Lev 25 2 Bl 240 Chan.

By the Eng St. 8 Ge. parol leases for a longer term than three years are made to amount only as leases at will - 1 Ba Agreement 672

But these are also now holden to be tenancies from year to year so that estates at will strictly speaking can now hardly be said to exist. 8 Ath 3 2 Bl. 143 Chan Ex. 1160 2 Burr 1609

In Ec. no parol leases of any kind for any period are valid they operate only as licenses - St. Ec. 354 -

Notice to quit at any other time than at the end of the year is not good - but the time intended for quitting in the notice will be presumed to be at the end of the year unless the contrary appears. 1 Ath 150 2 Bl 148 Chan

After notice by the landlord he receives rent accrued after the year end he waives the notice & affirms the tenancy. 2 Bl 148 Chan 6 Ath 210 1 Ath Bl 311.

If the notice is not good for the year in which it is made it is good for no other for there is a presumed waiver - But want of notice can not be set up by the tenant who denies the landlord's title - for he is not considered as lessee of the landlord 2 Bl 147 Chan 2 Bro C 161

If there is a lease for a year & the tenant continues in poss. after the year with lessor's consent he is considered as tenant for the ensuing year for there is a tacit agreement to continue the lease on the original terms - 1 Ath 152 1 Bro C 133 258

In this case notice is necessary at suppose 1 Bl R 162

How far is notice necessary in this State?

At Sufferance

If one comes into possn of land lawfully i.e. by lawful title & afterwards keeps it without any title he is called tenant at sufferance. Exp. Lease to J.S. for one year & after the expiration of the time he continues to hold without license. 2 Bl 150 1 Burr 57

Referred if a lease at will were made to J.S. & on lessor's death J.S. continued in possn without leave he was considered as tenant at sufferance. But now estates at will being treated as tenancies from year to year if lessor dies lease is in Engd. entitled to half a year's notice. 2 Bl 150 Ch. 1 Burr 57 2 Bl R 1357 3 Wil 26

His estate may at any time be determined by the entry of the true owner. But before entry he cannot maintain trespass against the tenant for his possn is presumed lawful unless the lessor by some public act declares it to be unlawful. 2 Bl 150 1 Burr 57.

In Engd the landlord to recover possn must actually enter & bring Ejectment. Entry is necessary for making the lease in Ejectment. 2 Bl 151 Salk 384

Actual entry is not necessary in Ct to maintain Ejectment. Gen. Court lease to make a tenancy in Ct R. Kirby 227

The Sts 4 Geo 2. & 11 Geo 2 have nearly put an end to this species of tenancy 2 Bl 150

If lessee for a term continues to occupy without leave it is not necessary for the landlord to give a month's quit as he is not a tenant from year to year. 2 Bl 150 Ch. 1 Bl R 53 162

Estates with regard to the time of their enjoymt. are divided into estates in possn. & estates in expectancies. Expectances are of two sorts, one created by the act of the parties called a devise, the other by the act of the law called a reversn. 2 Bl 163.

In Possession

Estates in possn. or estates executed need no definition, till the estates before treated of are of this kind. By these a present interest passes, not depending upon any contingency, & together with a right of present enjoymt. which distinguish this from estates in expectancy.

In Remainder

This is an estate limited to take effect & be enjoyed in future after another estate in the same subject is determined. A grant by tenant in fee to B. for years, & after the determination of that term to B & his heirs 2 Bl 164 1 Inst. 143.

These interests are but one estate equal to one estate in fee only. Hence no remn. can be limited on a fee simple, for tenant in fee has the whole inheritance in the most perfect mode to create a remn. is the mind remn. itself 2 Bl 164 2 Lev. 185 the thing is not indispensible Law 242 Plowd 29 134 59 70 Keigh 169.

General Rules

To create a remn. there must be a particular estate precedent to the estate in remn. which is called the particular estate, for remn. is a relative term implying that some part of the thing has been disposed of. 2 Bl 165 1 Inst 49 Plowd 25 34 Law 2. 242

An estate made to commence at a future time without an intervening estate is no remn. for it is not a residuary part of an interest of which

Rents derived during widowhood do not pass to remainderman upon her cohabiting with one who under an illegal marriage holds himself out as her husband - 276 & 258

disposition has been made - but a freehold cannot at C.L be created to commence in future it must take effect immediately in possn or rem.n - This is indeed necessary by the C.L mode of passing a freehold by which livery of seisin is necessary 2 Bl Rep 1188 Bl Rep 1 Fearne 234 5 Co 94.

Exceptions in case of freehold reversion - of a rent granted service or other a freehold rent in esse can not be granted to commence in future - for the former being newly created there can be no precedent right to bring any real action for it & livery is not necessary. 2 Vent 204 Palm 24. 30 Mod 150 Leo 144 Ad. 577.

The first of the rules is to prevent the freehold being in abeyance which would be to fetter the inheritance & that there may always be a tenant to the precipe in a real action who must be tenant of the freehold & one to answer pending service. 2 Wms 200 Fearne 234 2 Wils 166 2 Bl 1362

The meaning of the rule as applied to rents is that when a freehold rent is to be created a freehold must pass from the grantor at the creation of the fee tail or estate / not that a freehold rent must necessarily pass at that time / for in case of contingent rents the freehold rent does not pass at the creation of the fee tail or estate - but the reason of the rule has ceased to exist in a great measure real actions being almost entirely disused & in the modern remedy by distress a tenant of the freehold being unnecessary besides livery of seisin without which a freehold cannot pass in its nature operates immediately or not at all - for it is the act of giving present possn of the freehold - Eg. F. makes to S. in fee - here livery of seisin is necessary to give S. immediate possn of the freehold.

So also to S. for years rem.n to S. in fee - here livery of seisin must be given to S. to support the rem.n & this is construed to be giving possn to F. both being but one estate S. is presently seised of his rem.n tho to be enjoyed in future whereas a present fee is right of future enjoyment. 2 Wils 166

Estates in Reversion, Remainder and Reversion

2 Bl 103 4 Cru 107 1 Burd 21

A lease at will is not suff. to support a rem. for it is not deemed a part of the inheritance besides in case of freehold rem. entry to make seisin destroy it 2 Bl 166 8 Co 73 Dy 18 Rag 151

If the particular estate is void in its creation the rem. intended to be engrafted upon it must regularly fail. Eg. Estate for life to one not in esse rem. in fee. 2 Bl 107 1 Burd 208 2 Ro Ab 415

If the particular estate tho good in its creation is defeated afterwards the rem. must fail. for after it is defeated there is no particular estate to support the rem. 24 Particular tenant forfeits or surrenders his estate. This rule does not apply to rem. seems to rested rem. It is held contingent 2 Bl 167 vid. 2 Rem. 180. b 2 Bl 165 Dy 44 Co 6 203 Fearne 204 34 41 51

Also the rem. depends upon the livery of seisin made to the particular tenant if that is defeated by grantor's entry for cond. broken the rem. fails Bunk 2 Rem. 180 2 Bl 169 Co. on 2 Bl 163

2. The rem. must commence out of the grantor at the creation of the particular estate i.e. the absolute or contingent right must be created at the time. Eg. To A for life rem. to B in fee on a certain contingency here B's rem. depends upon the livery of seisin made to A. A to be for life rem. to B in fee on a certain contingency. Here B's right to enjoy the estate if the contingency happens depends from the intention. The the interest thus limited remains in the grantor till the contingency does happen 2 Bl 167 Prec 242 Litt 54 Plowd 25 1 Burd 40 2 Dan Ab 177 2 Bl 167 Co. on Recorde 275 87 88 Gilb 202

A rem. cannot be limited on an estate already in esse. but the limitation would be a ground of a remainder. Collateral be created by the same instrument. Fearne 223 2 Bl 163 2 Bar

If in a grant or devise there be a limitation in fee which is wholly void Ex. to an illegitimate child to be born - no estate passes & the use remains in the grantor or results to his heir 8 C. Lh. 226 -

3. The remd. must rest in interest in the grantee during the continuance of the particular estate, or consistent that it determines. Eg. to C for life remd. to B in fee. The remd. cont. nils at the creation of the particular estate. A to C for life remd. to B in fee to take effect two days after C's death. In this case the remd. is void in its creation for denying that interest there is no particular estate. Also the Lent chiefly referred to the creation of contingent remds. 2 Bl 158 Pond D 213 Pond Ro 160 bb 138 Fr 1121 Fearne 233 7 40.

Remds. are of two kinds vested & contingent. A vested estate is one in which there is a present fixed right of present or future enjoymt. in one case the estate is vested in possn. in the other in interest. A contingent estate is one to arise upon some future uncertain contingency. X of which there is no present fixed right of present or future enjoymt. Fearne 1. 2

Vested

Here are those by which a present interest passes to grantee tho' he enjoy not in future. Here the remd. is vested in interest at the creation of the particular estate tho' to be vested in possn. in future. 2 Wood 175 2 Bl 158 Pond D. 318 Fearne 1. 2

Contingent

Contingt. or executory remds. are those by which no present interest passes to the remd. man but which are to vest in interest upon a contingt. or uncertain event. Eg. To C for life remd. to B if he returns from Rome before the death of C. Here as soon as B returns from Rome it vests in interest. 2 Bl Rep 2 Wood 191 4 Pond 250 1 Bos 213 3 Co 20 Dod 228 4 Mod 282 Fearne 234

By the C. L. if the remd. were limited to the eldest son of the particular tenant his son in contingency at the time of his death could not take because not in esse. Remedied by 11 & 12 Geo. 3 - 2 Bl Rep Dod 228 4 Mod 282 2 Co 51 2 Wood 200

Where there is a legacy in remainder after the determination of a particular estate with an executory limitation over in case legatee dies the legatee takes only a contingent interest which is accepted if he dies during the continuance of the particular estate & the limitation over will take effect — 1 Ridge 632 1 Price 264 1 Swanst. 161 6 Ves. 536 11 do 29.
& the person to whom the estate is then limited takes under the devise & not through the legatee —

A rem.n to one not in being must be limited to a person who may by common possibility be in esse at or before the determination of the particular estate as to A for life rem.n to the heirs of B. B being in esse. This is good for that B will die before he is deemed but a common possibility in law. this case the word heirs is a word of purchase; Cute 1 2 Bl 1169 Cl. in Vearne 174 2 Co 51 1 Burr 3 54 78 1 Co 66.

But a rem.n to the heirs of B he being unborn at the time is void for the contingency is a remote possibility or a possibility upon a possibility as B must be born & also die during the particular estate. 2 Bl 170 1 Co 33 1 Burr 25 184 Vearne 177 2 Co 51.

A rem.n limited upon the happening of some thing unlawful is not good for it is a remote possibility. Hence a rem.n to an unborn bastard is void 2 Bl 170 Vearne 175 Cro Eliz 509 2 Co 51 Cowd 32.

Limitation on failure of a preceding limitation is not of course contingent 1 Burr 250 Vearne 163 399 Ca 229

A contingent rem.n of a freehold cannot be limited upon any estate less than a freehold. for a freehold must pass from grantor at the creation of the estate & it must rest somewhere, but it cannot rest in the rem.n man for no present interest passes hence therefore it must rest in the particular tenant. 2 Bl 171 1 Co 130 Kay 151 2 Cowd 199

Devise to A & B for their lives & the life of the survivor but if B marries & has issue then after his death to B & her heirs & if B dies single without issue to A & her heirs. A & B take joint estates for their lives with contingent rem.n in fee to each in the alternative. Done 75

Contingt rem.ns may be defeated by determining the particular estate before the contingency happens on which the rem.n is taken to it may be barred by fine or common recovery suffered by tenant for life to the use of himself & heirs if the rem.n is vested. 2 Bl 171 1 Co Cb 135 Fearne 241 & 528 Co 270 2 Lev 39 Bro C 630 Jac 224 2 Wood.s 186

But a determination of the seisin by the particular tenant does not of course defeat the contingt rem.n for he yet retains the right of entry which is a seisin in law & by this the rem.n is supported. 2 Wood.s 191 12 Mod 174 Pk 316 Salk 559 1 Co 66

From the rule arose the necessity of appointing trustees to preserve contingt rem.ns Ex. To A for life rem.n to B during A's life rem.n to C unborn. If A should forfeit do the rem.n to B would rest & continue till the death of A when C if born would take. 2 Bl 171 Burt 378 1 Mod 33 3 Co 31 1 Ves 142 2 Cath 246 570 577 Fearne 84 120 152

Whether a rem.n is vested or contingt depends upon the nature of the limitn not of course upon the probability or improbability of its taking effect in posn It is the uncertainty whether a rem.n will ever rest in interest not whether it will take effect in posn which renders a rem.n contingt Ex. To A for life rem.n to B in tail, this is a vested rem.n but if the rem.n were "in case B survives A" it would be contingt 2 Wood.s 192. 2 Bl 170

The present capacity of taking effect in posn were the posn remain is the universal criterion which distinguishes a vested from a contingt rem.n Fearne 149

Cross rem.ns are limitatns of an estate to two & with rem.ns on one event to one of them & on a different event to another 4 Ba 332 Co 31 1 Mod 33 Dy 303

Remainder & Reversion

One who has a mere future contingent interest in an undivided share of real estate cannot maintain an suit for a partition of the property—nor can a mere possessor without the concurrence of some of the owners of the present interest—but if the owner of a present interest whether for life or any other period bring his suit of partition the possessor must be made a party 2 Paige 387

A limitation in a will shall not be treated as a contingent remainder unless such clearly appears to be the intention of the testator - if it admits of being considered as a vested remainder it shall always be taken as such hence where land is given to one for life or any other estate inclusive or rent: away delimited & then to one sustaining a given character or heir at law heir male or next of kin the rem^n will vest in the person who fills that character at the death of the testator 27 6 L 167. The cases of Doe v Frost 3 Bx & P 546 Phillips v Deakin 10 M & S. 744 & 2 Mair. 171 2 Bar & Ald 625 2 Lane N 113 the intention of the testator clearly manifested the other way -

Estates in Remainder and Reversion

Find that cropremds. cannot arise between more than two / 4 Ba 338 Co 1 633 /
Rule - When they are to be raised between two only the presumption is in their favor. Sec if between more than two. But this presumption may be rebutted by circumstances of manifest intention either way. Co Lo 780 31
2 East 40 4 Ib 1 Ves 36.

Find that cropremds. cannot be created by deed - Rule - They cannot be raised by implication in a deed but must be expressly limited - tho in a devise they may be raised by implication. 1 East 4 Ib 4 Ba 33 1 Burr 28

In Ct. it is supposed by many that a freehold may be created by deed to commence in future if granted to a person in being or to the immediate descendants of a person living. St. Ct. 24 Sand. Sed qu. 1 Day 300.

Executory Devises

These are a species of expectancies which are not strictly remds., tho of a similar nature. 2 Bl 172.

Generally defined to be "a devise of a future interest to take effect not upon cessation of a prior estate but on some future contingency". This is not accurate for it includes all contingt. remds. as executory devises. 2 Bl 172 Fearne 298

In Eqty. devise is such a limitation by bill as the law admits in Wills, but not in C. L. consequence of them such a limitation of a future interest as would be good by way of contingt. remd. is merely a devise it is a contingt. remd. & not an Eqty. devise. Fearne 298 302 3 Atk 487 763 2 Salund 388 2 Ves 611. 2 Lord 222 3 Ath. 398 Cath. 344 310 Cowp 234 4 Mod 258 Doug 729

Eqty devises are allowed out of indulgence to a man's last will & testmt., he being regarded in lo. ultimi. where otherwise the limitation would be void. 2 Bl 172 Fearne 299 2 Lord 221 Pow D 250 2 Day 35 Lng.

Executory Devises

An Ex. devise differs from a rem. as to the mode of its creation in three particulars. 1. That the a freehold to take effect in future it requires no particular estate to support it. 2. That by way of Ex. devise a fee simple may be limited after a fee simple - these limitations in C. L. conveyances are void. 2 Bl 173 308 Fearne 302 3 Sal 220 Cro E 878 Palm 132 10 Mod. 420 Dy 74 1 Roll 610 Cro E 346 Pow D 238. 50.

Secondly limitation is made by devise to depend on a preceding freehold capable of supporting it as a rem. & the preceding estate fails before the testator's by the first devisee's death the second shall enure as an Ex. devise - Ex. to A for life then to the first unborn son of B & A dies living the testator then testator dies & then B has a son he takes by Ex. devise. Fearne 401 18 Ball 414 Doug 323 476. Contra 12 Mod 128 Bord 184

A limitation by devise of land to A & his heirs to commence on the day of his marriage is good. It is a freehold to commence in future without any particular estate to support it - the fee in the meantime descends to the heir of the devisor liable to be devested on the happening of the contingency 2 Bl 173 Ibid 153 Fearne 303 Cro E 208 Sal 229 Cro E 878 Palm 132 1 Eq. C 188 2 Wms 233 Pow D 255 Doug 481 1 P. Wms 505

Third. A life estate may be limited after a fee. Ex. to A & his heirs in fee but if he dies before 21 then to B & his heirs &c. Here indeed the last limitation is not to take effect after the expiration of the first fee but is a substitute for it. 2 Bl 173 308 2 Rolled 280 Fearne 303 Sal 229 Palm. 132 2 Wms 126 181 Eq. C 208 1 Eq. C 360 Pow D 250 10 Mod 420 Fearne 416

Fourth. A rem. may be limited of a freehold to take effect after a life or a term. Ex. devise to A for life of a term for 99 years rem. to B - this is good - a devise for a life estate is broader than any term for years 100 a total disposition of at al C. L. 2 Bl 174 2 Wms 238 860 Q 5 -

A limitation by way of executory devise which is not to take effect until after the determination of a life or lives in being & a term of 21 years as a term in gross without reference to the infancy of any one is a valid limitation. Sees if to such term in gross is added further time 1 Ch. C. S. 164

Formerly a legacy of the use of a chattel for life with remd. over was good but not of the thing itself for life with remd. over - Devise now good in both cases. Deane 209 2 Bl 398 Cro E 346 Cro 95 10 Co 41 1 Ro 1 : 2 Ch. Ca 31 Cro J 21. 67

Contingt. remds may be barred by fine or recovery but an Exy. devise cannot be - for it is distinct from & not depending upon any prior limitn. & the destruction of the prior limitn. does not destroy the Exy. devise - 2 Bl 173 Cro E 593 Deane 306 11 Rec E 185 Ro Co 32 Moor 269 Dy 74 338 2 Ward 227

Hence a rule is established fixing the period within which the contingcy on which the ultimate limitn. depends must happen in order to render the limitn good for as an Exy. devise cannot be barred it creates a perpetuity till the contingency happens or becomes impossible. Deane 314 2 Bl 173 12 Mod 287 Sed 229 2 Ward 230

Rule - An Exy. devise to be good must be so limited as to take effect if at all within a life or lives in being & 21 years & the fraction of a year 9 or 10 months afterwards. 2 Bl 174 Deane 314. 20 Sb 7 Br 100 393 Dany 590 Ball 228.

If according to the terms of the devise the contingency may possibly happen at a more distant period the limitn is void in its creation Exy. devise to the first unborn son is good but a devise of lands to the sons of a person unborn is void 2 Bl 174 Deane. 314. 201 320. 55 1 Wils. 207

Sir Fearne says a diffn. rule with respect to the remdr. of a chattel interest - that all the remainders must be in esse during the life of the first devisee & that the contingency on which the ultimate limitn is must happen during his life. 2 Bl 174 1 Ro 451 Skin. 341

according to the rule as ment. in a chattel interest limited to be for life by way of Exec. devise then to B for life & then to B's unborn son would be void as to the unborn son. But the rule seems now to be settled that the period allowed for the happening of the contingency is the same in all the three kinds of Exec. devises so that the limitn. is good if framed so as to take effect within a life or lives in being &c. Beame 320 55 2 Cth 282 7 Hb 102 2 Plo 421 1 Vern 234 87 304 2 Wood. 230 2 B 175 Chn Pow. D. 328 86

A Exec. devise is limited to take effect after a gen. failure or after one dies without heirs or issue the limitn. as an Exec. devise is void for the word import a failure of heirs &c at any time indefinitely without this rule holds as to all the three sorts of Exec. devises. Beame 313 Pow. D 426 1 Eq. C 186 2 Wood. 232 41 Bell 258 1 Burr 877 2 Sim. 111 3 Cth. 617 4 Mac 316 Ld R 87 3 Hr 146 1 Vent 79 2 B 175 Chn 1 Roll 611.

But if to A & his heirs & if he dies without heirs his body or without issue or without heirs as the case may be then to B — B may take under the limitn. as a rem. or an estate tail created by implication & if there are other words showing that the words "if he die without issue" are used as referring to the death of the first devisee the limitn. is good as an Exec. devise. Beame 332 Pollex. 223 Sal 225 1 Eq C 103 1 Sid. 204 3 Cth 232 2d 308 14 7b 1 Plo 432 2d 258 3 Hr 146 7d 522 Pow. D 251

If one devises to A for life rem. to B in fee provided that if A die in his lifetime or non leave the land shall go to him in fee — the title of the remainder fails but not A's estate. Pow. D 251 Dy 127.

In C.C. the words "if he die without issue" have been construed according to their ordinary acceptation — the limitn. therefore on such an event may be good here as an Exec. devise. Sanders Uses —

No limitation should be considered as an executory devise which may be good as a remainder 21 L.L. 57. Ex devise to A. his heirs & assigns forever (after the death of B) but if A. should die under 21 to C. his heirs but if he shd die under 21 to such other sons of A & C. as shd attain that general remainder to R in fee

21 in tail male remainder to daughters in ~~fee~~ to C. died under 21 & their father had another son & daughter have that the remainder to the other sons those being no freehold to support it was good by way of executory devise if the limn. to daughters in tail shd fail the estate in shd go to R in fee by virtue of the remn.

Devise to A. in fee & his heirs forever but if he died without heirs then to B. who was a stranger in blood to A. & his heirs but if A. offered to mortgage or suffer a fine upon the whole or any part then to go to B. Held that A. took an estate in fee with an executory devise over to take effect on condition void in law 2 that a conveyance of a part of the estate wd. not be affected by A. subsequt. mortgage or fine of the residue. 3 that a conveyance of the whole in fee wd. be good against all persons claiming under the will 21 E.L. 105 Killingh. v. Cardut 1 Ves. Sen. 88 Bradley v. Peixoto 3 Ves. 324

Any limitation of a future estate only way of Exec devise or remainder tending to a perpetuity is void. Devise to A & to C for life remainder to his unborn children for their lives remainder to their unborn children — the last limitation is void — such limitation could extend no further than to the unborn children of one in esse — Courts will however sometimes to effect the gen. intent in devises construe the limitation in these cases according to the doctrine of express words give the first unborn devisee an estate tail. Fearne 391 1 Ro 332 5 Bro C 502 2 Ch 251

Where a contingent or alternate estate is devised over on a condition annexed to a preceding estate & the preceding estate never takes effect the subsequent limitation takes place. Ex. Devise to A for years remainder to his sons at 20 in tail if he should take the testators name if not remainder to C — If the consideration not complied with the condition C would take. Fearne 163 399 2 Ves 18 4 Ves 710 8 Ves 420 Sel 229 Pr Ch 316 2 Ch 251 351 Ves 134 1 Bos 250.

The remainder is accelerated for the last limitation is a substitute for the former one. The preceding estate or the condition to it is not a condition precedent to the last nor is merely a limitation estate accompanied with a condition so that the last limitation is a vested remainder the defeasable subsequent. Ex. Devise to C in tail & for want of issue to B — If C dies without issue B takes immediately on the testators death. Long 323 Reeves 341 Bro C 422 2 Ves 22 1 Bos 250 Sel 229. 230

Tenure if the preceding estate was void tho there was no sense of the contingency Ex. Devise of personal property to C if he dies without issue to B remainder on a contingency to C — C cannot take on failure of B's remainder — for if the subsequent limitation is so made as to depend upon the event for it is then in the nature of a remainder which cannot take effect if there is no particular estate. 2 Ch 216 3 Ch 251 351 369 1 Ves 134 Fearne 407 418

Vested remainders are alienable devisable transmissible & assignable

devise before the rent. mean comes into poss.n. Cit totties rule there is no contradiction & the same is now settled as to contingt. interests & contingt. rent & Eq.n devises except they are assignable only in Eq. & this before the contingency happens - But such contingt. interest where it accrues does not necessarily lest in him who is heir at the time of rent. mans ordinary death but in him who is heir when the contingency happens - There are called possibilities clothed with an interest - E. devise to A for life rem.r to B in fee on a contingency - B dies before the contingency leaving two sons by diff.t wives - The eldest son dies without issue & then the contingency happens - Now the second son of B shall take in exclusion of the heir gen.l of the eldest son. Fearne 280 439 Salk. 1.5 1 Ld R 222 605 1 Ch Ca 30 4 Ch R 248 3 88 288 n 1 Bouls 202 Pow 34 239 497 2 Wood.n 211. 47 1 Bro C 181 1 Ves 4.6 Pl Ch 4.6 2 Ph 572 2 N R 383 2 Coll 20 2 B 228 Elm & Kin 112

Contingt. rent. & Eq.n devises are not transferable at law by deed while they remain contingt. - for a grant must be of a present interest but as soon as they become vested in interest they are transferable at Law. 2 Wood.n 187 212 Pow & 152 Plow 132 1 Mod 132 2 B 290 1 Ple 574 Shep 238 322

But they may be passed away at Law by being precluded by fine or recovery - The person entitled must be a party to the fine or in case of Eq.t devise the recovery stands in law to the party & all claiming under him. 2 Wood.n 212 38 1 B Cro 573 Fearne 310 18.

So they may be released at Law to the owner of the land - for a release is in the nature of a waiver of a right or rend. 2 Wood.n 218 1 Ves. 411 11 Mod 152

An assignmt. of such interests is good only in Eq. where it will be enforced as an agreement. - But the assignmt. must be for a valuable consideration or for a consideration in the second degree. & the amendment of a deed if fraudulent or voluntary it is not enforced. 2 Wood.n 213 1 Ves 407

Events happening after the exn of the devise & before the consummation of it by testator's death may vary the limitn from a remn to an Ex devise Doug 325 4 Mb Bell 110 Jenne 101 10.

So it seems that the event happening after testator's death if there is a double contingency so that a limitn which in one event which has not happened would have been a remn may in another which does happen become an Ex devise — The limitn in such case is called a limitn upon a double contingency — Its operation as an Ex devise in one event is provided for by the terms of the limitn & such limitn may be implied Doug 478 n 2 Ves 214 7 Pa 386

If the first limitn is an Ex devise those which follow are so of course & it is said that when the first rests in possn those which follow rest in interest & become vested remns — But the last position seems cannot extend to cases in which the subseqt limitn depends upon an event which has not happened when the prior one rests in possn Ed. Doug 478 Jenne 3 Mb 2 Ves 240 / Ex devise to A in tail if he attains the age of 21 remn to B in fee provided he shall marry — A attains the age of 21 before B is married — Bs remn cannot rest in interest till he marries —

Estates in Reversion

An estate in reversn is the residue of an estate left in the grantor to commence in possn after the determination of some particular estate granted by him. The subsn rests in the grantor by the act of law without any reservation for what he does not transfer remains in him. 2 Bl 175 Bnd 22 2 Lev 172 3 Sw 405

A remn can only be created by deed or devise — A reversn by operation of law only — but both are transferable when vested being estates in

praesenti to be enjoyed in futuro. 2 Wood 173 Hob 30 2 Bl 175.

It seems then that a contingt. reversionary interest cannot commence on the determination of a lane fee is not transferable - besides there could be no attornmt. 2 Bl 109.

If one grants an estate for year for life or in tail with remr. to himself what he thus limits to himself is a reversn - the old estate which was never out of him - when rent is reserved on a lease it is incident to the reversion to that by a genl. grant of the reversn. the rent will pass. 2 Bl 175 2 Wood 173 3 Sen 400 Co Ld 321 1 Burr 112

But it is not inseparably incident - for by special words the rent may be granted without the reversn & the reversn without the rent - The reversn will not pass by a genl. grant of the rent - for the reversn is the principal & the rent the incident - the incident passes by a genl. grant of the principal but not e converso. 2 Bl 175 1 Burr 131

It is said that if one make a lease the reversn. cannot be granted away till lessee enters - This is founded on the doctrine of attornmt. & since the necessity of attornmt. has ceased by 4 & 5 Ann & 11 Geo 2. the rule must cease also. 2 Wood 173 1 Burr 115 3 B Litt. p. 56 2 Bl 72. 258. 9 l

Attornmt. is unknown in Ca. being founded on feudal principles -

A reversn may be granted by the word "land" - as a grant of such a lot of land in which grantor has only a reversn. 2 Wood 174 1 Co 107 Plowd 488 -

Before the St. Frauds a freehold reversn could not be granted except by fine or deed of attornmt. for there could be no livery of seisin it being an expectancy - but a copyhold reversn for years might be conveyed

without deed. 2 Wood. 174 Cro E 143 Litt. fo 267 Perk. fo 61

A device of a rever. was always good without attornment. as a device of an estate in posse. is without livery. Sto 4 Rob Cam. 11 Geo 2 et. al. resp.

A. the whole rever. may be granted away so it may be subdivided & a particular estate or estates be created leaving the ultimate rev. in the grantor Ex. Rever. in fee grants for years to commence after the particular estate is determined — So also there may be a rever. of a chattel real - Ex. Lease for 10 years leases for 5 Wood 175. 3 Lev 154

The rever. expectant on the determination of an estate tail is so remote that the law deems it of no value - Indeed the rever. is in the power of the tent. in tail - hence it is not assets. Pow. 111 443 8 Pl. 235

When a greater & less estate meet in the same person without an intervening estate the less is merged in the greater Ex. Tent. for years purchases the rever. in fee. 2 Bl 177 3 Lev 437 6 Co 61 Cro E 302

But they must meet in the same person in the same right Semb no merger. Ex. One hath the rever. in his own right & the particular estate in right of his wife - In this case neither the less merged in the greater estate the rights of others would be injured. 2 Bl 171 Plowd 418 1 Ind 338 Cro J 275

And if an estate tail & the rever. in fee meet in the same person there is no merger - For tent. in tail cannot surrender or destroy except by fine or recovery - To allow the merger might defeat the issue by other means than those which the law allows for the purpose of defeating their rights. 2 Bl 177 2 Co 61 8 Co 74 Cro E 302

Estates in Severalty

Under former titles we have considered estates with respect to the quantity of interest in the owner & the time of their enjoyment. Now to be treated with respect to the number & connexions of their owners. 2 Bl 179 2 Wood 112

An estate holden in severalty is one of which there is only one owner during the continuance of his interest. All estates are supposed to be in severalty unless they are declared to be otherwise. 2 Bl 179 2 Wood 112

Estates in Joint tenancy

An estate in joint tenancy is an estate in lands or tenements granted to two or more in fee simple fee tail for life, years, or at will. 2 Bl 179 2 Wood 124 Litt. § 277 2 Co a 188

This estate is always created by purchase or act of the parties & never by descent or operation of law. 2 Bl 180 2 Wood 124

If an estate is given to two or more without words denoting an intention that it should not be a joint tenancy it will be such. Ex. to A & B & their heirs. But if land is granted to two to be held one half to one & the other they are not joint tenants but tenants in common. 2 Bl 193 Litt. § 298.

The properties of this estate are derived from its unity which is fourfold. Unity of interest title time & possession. 2 Bl 180 2 Wood 128 Co R 311

Unity of Interest

One cannot have one quantity of interest & the other another quantity. As for life & years &c. If so they are not joint tenants. So if the estate of one is in possession & the other in expectancy. 2 Bl 180 2 Wood 127 1 Inst 192 Litt. § 277

If a grant is to A & B for their lives they are tenants of the freehold &

Estates in Joint Tenancy

each has an estate in the whole for the life of his companion & for his own life. If to A & B & their heirs they are joint tenants in fee & the inheritance goes entire to the survivor 2 Bl 184 Litt § 280. So if a grant is made to A & B for their lives & to the heirs of A they are joint tenants for their lives & A has the fee in reversion.

So if a grant is made to two men & the heirs of their bodies or to two women or to a man & woman who cannot intermarry as brother & sister they have a joint estate for life but from necessity reversal inheritance for no one can be the heir of the bodies of both the issue of each will have a remainder after the death of both. 2 Wood 126 Litt § 283

If to a man & woman who may intermarry & the heirs of their bodies it is a joint estate tail but it is that the inheritance goes entire to the heirs of the body of the survivor as in case of joint tenants in fee. Litt § 283 1 Brooke 82.

Unity of Title

The estate must be created by one & the same act or the same conveyance. If some they would have diff. titles one might be good & the other bad which would sever by the joint real title. 2 Bl 181 Litt § 278 2 Wood 128 Co Lit 311.12

Unity of time

The estate must commence at one & the same period of time. Each of an undivided part of an estate is deemed to be to take effect at one time & the other part to be to take effect at another they are not joint tenants 2 Bl 181 1 Brooke 188 2 Wood 129 13 Co 55 Co Lit 311.

But two may hold as joint tenants their rent at diff. times. Each of such to be to the use of himself & his heirs & in the conveying out of it has relation to it. 2 Bl 181 Dy 340 1 Co 101 Co 76

Estates in Joint Tenancy

Unity of Possession

They are seised per my et per tout. Each is seised of an undivided part of the whole. Therefore one cannot in strictness enfeoff the other tho he may release him & a feoffment will enure as a release. 3 Bac Abr 600 Co 304 Perk. p. 123 1 Brook 10. 8 2 Bl 182 Litt. p. 288 & Co 10 2 Wood 130.

But if a fee is granted to husb. & wife they are not strictly joint tenants nor tenants in common - being considered as one they are seised per tout only - they take by entireties not by moieties. Hence the husb. cannot by his own act dispose of any part of it - nor of a moiety - neither can the wife but the whole must remain to the survivor unless disposed of by fine or recovery in which both must join yet husb. & wife may take a moiety with a third person. 2 Bl 181 Co Litt. 187 b 265 2 Sec 34 1 Brook 187 327 7 Co 140 Perk. p. 223 Hob. p. 203 1 Roll 388 2 Leon 120 3 Bac 190 5 Mod 654

The law includes not both as to choses in action & chattels real which are vested jointly in husb. & wife - of these he may make disposition during coverture for valuable consideration 2 Wood 128 but personal chattels given to husb. & wife in pos. vest absolutely in husb. 2 Wood 128.

A wife is not entitled to survive in an inheritance holden jointly by husb. & another for the other tenant has the higher title - yet if the other a contra husb. is entitled to survivorship 2 Wood 128 Litt. p. 115 3 Bac 188 1 Brook 30

Upon this ultimate union of interest & possession depends the principle incidents of joint tenancy, one of which is that act by or to one are generally operative as to both. Eg. If both make a crystal lease reserving rent to one only it will enure to both by reason of the joint reversion 2 Wood 130 2 Bl 181 1 Brook 214 192.

Livery of seisin to one is livery to both - for the possession of one is the possession of

If lands are conveyed to husb & wife they are neither joint tenants or tenants in common being legally but one person they cannot take by moieties but both are seized of the entirety - neither can dispose of any part without the consent of the other & the whole goes to the survivor
16 Johns 115 2 Bl 183 Co. L 187 2 Kent 120 1 Cowen 96

Lessee Lessee by one is effectual as to lessee 2 Bl 182 Hob 120 1 Inst 49. 3 Co 86

In action relating to their joint estate they must sue & be sued jointly 2 Bl 182 2 Bac 215 1 Inst 180. 05 Coke 328, Seymour's Ct. 4 Day 303. 4

One cannot have trespass against the other in respect to the joint estate for each has a right to enter on every part - the regularly one cannot do any act which will deprive the estate of the other - E & S seising the whole against the other's consent. 2 Bl 183 1 Leon 284 3 - 263 -

One may have an action of waste against the other by construction of the statute 2 - Seymour's C. R. 2 Bl 183 2 Inst 403 Coke

One may make the other Bailiff of his moiety & so have account against him not otherwise by C. R. - but by 4 Geo one may have account against the other for receiving more than his share of the profits. 2 Bl 182 Co Lit 1 Inst 200 2 Wms 130

Upon this union of interest & profits depends the incident of survivorship or jus accrescendi which is the right of the survivor among joint tenants to the whole remaining interest in the tenancy after the death of his companion so that if A & B are jointly seised of an estate on the death of one the interest rests in the other survivor 2 Bl 183 Litt §. 280 281 2 Wms 125 Seymour's Ct. 1 Root 48. 9 & 444

For the original interest is the same i.e. an interest in all & every part & the survivor is not a creator of this right by the death of his companion he has then a higher claim to the whole than any other has to any part 2 Bl 184.

This right of survivorship is paramount to the claims of the creditors of

Estates in Joint Tenancy

the deceased tenant even of judgt. creditors unless exte be sued out at his death
3 Ba 209 Litty 286 1 Brot 184

The same rule holds as to chattels personal held in joint tenancy - Sales of joint stock in trade - here the Lex Mercatoria takes place / governs which no survivorship - Partners in trade are not therefore joint tenants to sell purposes the collected mass - Sale of stock on a farm the owners jointly - 2 Woodd 49 40. 6 204. 9. 313 11 Co 3 1 Vern 217 Ducat 17 1 Ab 32 Comyn 449 1 Ves 242 52 1 Brot 182 2 Bl 390.

Neither the King or any other Corporation can be joint tenants with a private person - qu. Why? - One reason says 2 Bl 184 is that the private person has no chance of the benefit of survivorship & he says the jus accrescendi ought to be mutual - 1 Brot. 190 Finch L 83 3 Co. 12 / Not the true reason Sanb. cite

Two Corporations cannot be joint tenants tho the right of survivorship is equal - besides it is not necessary the right of survivorship should be equal - A & B may be joint tenants for the life of C - here B has no possible chance of survivorship. 2 Woodd 126 1 Brot 181 2 Bl 184 Co Litt. 190

Can Joint tenancy exist in Ct. as the jus accrescendi is not recognized by our Courts? No 1 Root 48. 9 L 943.

Joint tenancy may be destroyed by destroying any of its unities - 1 The unity of time being joint cannot be destroyed - But 2. by destroying the unity of profit. Ex. If they joint the land & hold it in severalty a they are not then seised jointly - & the jus accrescendi is destroyed. 2 Bl 185 1 Brot 185. 93

Decided in Ct. that the declarat. in an action for partition must demand the ⅔ proportion not in point of quantity but in value taking

quantity & quality Root 69 70

Ed E.S one could not compel the other to make partition tho they might do it by agreement of all & it was not otherwise to be destroyed - But by 31 Hen 8 they are compellable by writ of partition to divide. 2 Bl 185 Litt § 290

So by our St. 258 - But our St. does not extend to town commons or waste lands - But it enables guardians to make partition of their ward lands.

3 By destroying its unity of title. 4. One alienes his part to a stranger - then the other & the grantee hold by diff. titles the unity of poss. remains 2 Bl 185 Litt § 292 2 Woodd. 138 1 Burr 186 Cas 285 Co Litt 44.

But a deed by one joint tenant does not sever the estate - Indeed it does not take effect in the interim has a perfect title accruing at the cessation of the estate. viz. Decease 2 Bl 186 Litt § 287 1 Burr 185.

4. By destroying the unity of interest - As if there are two joint tenants for life & the inheritance is purchased by or descends upon one of them. Semble an estate is originally granted to two for life & to the heirs of one of them for there are no separate estates but branches of one estate. 2 Bl 186 2 Co 60 Burr 182

If a joint tenant infer make a lease for life of his share it is no severance of the freehold 2 Bl 186 Litt 302 1 Burr 191

If one of three joint tenants alienes his share the others hold their parts as before for as to them there is no severance - So if one releases his part to one of the other two the joint tenancy as to the other two part remains - whereas this joint tenancy ceases the survivorship ceases with it 2 Bl 186 Litt. 294 1 Burr 188.

Estates in Joint tenancy

In gent. it is advantageous to consider the joint tenure for the survivorship being taken away each may terminate his part to his representatives & heirs if two are joint tenants for life 2 Bl 187 1 Sore 55

If two are joint tenants for life & one claims for the life of the other he forfeits his interest or forfeit by accidence he has given himself in his own body only one estate for his own life & then he grants it for the life of another 2 Bl 187 4 Bacon 237 1 Inst 252.

If one joint tenant wants his companion the latter may have Ejectment to obtain poss. in but there must be an actual ouster before poss. & receipt of profits is not sufficient 3 Ba 219 1 Inst 199.

Estates in Coparcenary

An estate in Coparcenary is one which has descended to two or more persons as heirs at L. the rest heirs of a deceased person as tenants or more females where they all inherit as co-heirs called Coparceners or parceners. 2 Bl 187 Litt § 241 2 Wood 113 1 Inst 163.

Sole by the custom of Gavelkind all the sons are Coparceners 2 Wood 114 2 Bl 187 Litt § 265. But L. C. all the children.

All the parceners are considered as but one heir having but one estate 2 Bl 187 2 Wood 113.17

The properties are in some respects like those of a joint tenancy & in others of a distinct title & prop. 2 Bl 188.

They may use & be seized jointly in common relating to their estate & the entry of one is in some case the entry of all to the entry of the guardian for poss. in common inures to the benefit of all. 2 Bl. 188 1 Inst 164 284 2 Wood 115 7 Ch 386.

Coparceners whose right of entry is barred by the St. Limi.
cannot recover in Ejectment by joining with one whose
right is not barred. 4 Day 310

Estates in Coparcenary

One cannot have trespass against the other or maintain an action of waste against him to coparcener for either could always recover or compel partition. 2 Bl. 188 2 Inst 143 2 Wood 114 1 Inst 164

They differ materially from joint tenants in other points. They always claim by descent. Joint tenants by purchase. There no other than estates of inheritance can be holden in coparcenary & in gent. whatever may be inherited may be holden in Coparcenary. 2 Bl. 188 Litt. p. 254 2 Wood 114 1 Inst 164

No unity of time is necessary. 24 Ed. 3 one of two parceners die the survivor & heir of the deceased are parceners the their estates vest at diff. times 2 Bl 188 1 Inst 164 4 2 Wood 114

They have an unity yet they have not an entirety of interest. Each is seised of the whole of a moiety not of a moiety of the whole. There no jus accrescendi. The share of each descends to his or her heir. 2 Bl 188 1 Inst 163

The mode of descent is per capita if the claimants are in equal degree related to the ancestor. E.g. Ancestor leaves two sisters. Then if they are not related in equal degree so are entitled by right of representation they then take per stirpes. E.g. Ancestor has two daughters one of whom dies leaving issue living the ancestor. The issue take per stirpes in descents from parceners males are preferred to females. 2 Wood 114 1 Inst 164

As long as the land continues in a course of descent the profits not being dismembered it is holden in Coparcenary. Even if the profits are shared by partition or in any other manner. If two parceners die leaving heir land entitled to entirety the heirs are not held as parceners but as tenants in common 2 Bl 188 Litt. p. 309 1 Inst 164 2 Wood 118.

One of several Co-parceners may maintain Ejectment on her separate demise 1 Salem. 231. 4 Day. 312

One co-parcener cannot sue separately for her share of rents accruing to all 25 L. & 229

Estates in Coparcenary

A the husband may have entry in an estate of his wife holden in Coparcenary so she may be some time sole for lands so holden by hindr. for there is no mariorship to prevent it - 2 Cooke 119 Litt. 264 -

Partition may be made among parceners by consent in four diff. ways 1. where they agree at a certain part each shall take & so to the division 2. when they leave a third person to make a division 3. when the eldest divides & the others choose - 4 where they cast lots for their shares - 2 Bl. Rep. 2 Cooke 120 Litt. p. 243 64 1 Burr 166 3 Co 22 -

They are also compellable to make partition at C. L. compulsory partition is by writ of partition at C. L. or by bill in Eq. 2 Bl. 189 Litt. p. 241 2 Cooke 120 -

On a writ of partition there are two juries - The former is that partition be made or which a writ issues to the Sheriff to cause partition to be made by the Jury on the return of the Jury's report the second jury is given that the partition be made be ratified & confirmed forever. 2 Cooke 120 2 Bl. 189 -

Formerly the common practice was to apply to Chancery for a decree to make partition & it now the practice when the title is unclaimed or there is any encumbrance 2 Cooke 120 1 N.R. 62

Whenever indivisible thing is holden in Coparcenary the common practice is for the eldest sister to have it if the persons making the others reasonable compensation in other parts of the inheritance or they all have the profits by turns - 2 Bl. 190 1 Burr 164

Estates in Common

Tenants in Com. according to 2 Bl. 191 are those who hold by several

Estates in Common

Distinct titles, but by unity of possn. By this must be understood that no other unity than that of possn. is strictly necessary to constitute this estate for they may hold the same quantity of interest arising at the same time & under the same title or conveyance if the proper terms are used to create a tenancy in Comn. 3 Bl 191 Litt. § 292 2 Wood 133 - Seems unless the words are used to create a tenancy in Comn. But if there is no other unity than that of possn they are of course tenants in Comn. 2 Bl 191

Coheirs are tenants in Comn. to be therefore held bound by several titles only one title & several rights. Tenants may hold in fee another in tail &c. therefore no necessity of unity of interest. The estate of one may vest at one time & that of the other at another so no necessity of unity of time. The only necessary unity is that of possn. neither knows what is his share. 1 Inst 189 2 Wood 133 3 Ba 188 2 Bl 182

Tenancy in Comn. may be created either by such a construction of an estate in joint tenancy or Coparcenary or does not sever the possn. only special limitation in a deed or devise. By one of two parceners conveying his share to S. S. he & the other parcener are tenants in Comn. 2 Bl 182 Litt. § 309 3 Ba 194 1 Inst 189.

Whenever a joint tenancy is destroyed without a partition & that unity of possn. remains it is converted into a tenancy in Comn. 2 Bl 193 3 Ba 194

It may be created by express limitation in a deed or devise & if by deed or devise an estate is given to two or more which is not a joint tenancy it must be a tenancy in common. 2 Bl 193 2 Wood 134 3 Ba 194

The rules of construction favor joint tenancy rather than a tenancy in Comn. & by the latter the feudal services arising from tenure are divided 2 Bl 193 Chan. qu. in Ch.

If one tenant in common in pers^n. dispossessing himself legally entitled to the whole premises erects valuable buildings thereon he will be ~~[illegible]~~ entitled to an equitable partition so as to give him the benefit of his improvements 3 Paige 546

Tenant in common or mortgagee called on to account is to be allowed for necessary repairs made & taxes paid 4 Paige 343 1 John Ch 355 2 de Ca 441

If tenant in common takes the whole profits & refuses to pay over to the other tenants their share such pers^n is not adverse but if he continues in poss^n a great length of time without interruption or claim by the other tenants the law might infer from this an actual ouster 3 Mass 99. 100 yet it is not necessary that there be an actual ouster if the entry be with a claim to the whole estate it is adverse to the other tenants 4. One tenant conveys the whole estate to a stranger who enters claiming the whole 9 Cowen 530 7 Wheat 121

If two or more are tenants in common of land & carry on the farming business as partners & one sells his interest the partnership is dissolved & grantee becomes tent. in common with the other & subject to sell his rights & to an account to be taken between the original partners & as the law will not presume the existence of such rights they must be shown by him claiming them 8 Mond 442 6 Adns 144 14 do 318 17 do 525 1 East 363 7 Cowp 448 4 Burr 2174 Gow 366 5 Ves 295 4 do 396. 15 do 559 n 5 John Ch 60

The one tent. in common of personal property can sell but his own share yet if title have been defective of the prop. by a wrong doer their right to compensation is a joint one & their remedy a joint action hence one may release & discharge all the joint right of action & the action itself – so a settlement by one of co-heirs on the common land bars both & such settlement is a transfer of the property secured from the freehold by the act of trespass 22 Maine 287.

Estates in Common.

The most usual & apt way whereby a tenancy in Comon is intended to be created by deed or devise is to limit the estate expressly to be held as in Comon & not in Joint tenancy 2 Bl 193 3 Bl 194 — But other words of expression will answer. Eg — Grant to A & B of Lands "to be held one half to one & the other half to the other" for Joint tenants are not held by distinct moieties 2 Bl 193 Litt. p 293 1 Burr 190 3 Bac 194

A deed or devise to two to hold jointly & severally one or two a joint tenancy for a joint estate is implied in the word "jointly" & "severally" is insert perhaps only a form of partition. 2 Bl 193 Cha Ab 6 32

A rent-charge devised to two or more to be equally divided between them is an estate in Comon 2 Bl 193 3 Co 39 1 Vent 32 3 Bac 195 2 Co 190 2 Vent 325 65 Comp 157 Co Ent 605 2 Ves 252 1 Eq C 292.

It was formerly held that the words "to A & B equally" in a devise created a joint tenancy 1 Bl 193 2 Bl 191 1 Co 17 Cal 391 Dy 622 Com 288 Contra that they create a tenancy in Comon 2 Wood 135 Hob 341 Comp 660.

Tenancy in Comon may subsist of a freehold, chattels real & personal. Litt. p 320 2 Wood 135

The wife of a tenant in Comon of an inheritance is entitled to dower of the land to contingent 2 Wood 135 Litt p 44.5.

A tenant in Comon have without interest one may directly convey his share to the other 2 Wood 135

Incidents

Tenants in Comon are not compellable at C L to make partition. Secus by 31 & 32 Vic 8. 2 Bl 194 2 Wood 136

Estates in Common

There is no unity between them for they take by distinct moieties. They cannot join in actions relating to the realty for their title & interests are diff. secured, yet if a single injury is done for all ought to join. Co Litt 197 a 2 Bl 194 Litt § 311 2 Wms 155 3 Bac 216 Bract 107 Jal 390 Cutts 340 Dyer 422 2 Ch Bl 387.

So in trespass & all personal actions founded on their interest in Comn. they ought to join, for tho their estates are several yet the damages to be recovered in personal actions are not so & these actions run to the person. If they make a lease reserving rent the reversion shall follow the nature of the reversion which is personal hence they cannot join in an action for rent arrear. 3 Bac 216 2 Ch Bl 387 Brct 107 Moor 202 Esp 404 2 East 154.

If they are disposed they cannot join in an action to recover the land, for their title & interests are distinct. 3 Bac 216 1 Show 342.

For the same reason they cannot make a joint demise to found Ejectment, the lessee in such case cannot recover. 3 Bac 216 1 Show 342 1 Brct 200 2 Wils 232 2 Ch Bl 387 Esp 448 Cro J 166 Jones of Joint tenants & Co parceners Dyer 72 b Rol 400 Hob 181 Bac 1 Esp 449.

In Ct steal in Comn. may be severed or joined in actions.

At C.L. one cannot sue his companion in account for receiving more than his share of the profits of the estate except where the bailee was made bailiff to the former as in case of Joint tenants. Jones by 4 Mun. 2 Bl 194 Brct 200.

By St. Westm. 2 they may have an action of Waste against each other 2 Bl 194 note.

The interest of one joint tent. in the joint property may be taken by attachment for his separate debt & when attached may be removed altho, the rights of the other may be impaired 10 Ct 44

If one tent. in common be sued for any thing respecting the land held in common he may plead the tenancy in abatement 1 Saund 291 E. - But this rule does not apply where the title to the land cannot come in question - as where the act complained of consists in mal-feasance - & Entering a nuisance on the land 14 Johns 426

5 Burr 2067

If a grant be entire to several an election under it by a majority of the grantees concludes their co-tenants in common 4 Mend 68 10 L. 145 a 1 Roll 176 D.

Where a demise by tenants in common is joint they must join in an action for the rent If where the demise is several they cannot join in such action 27 L. J. 557.

None tent. in Com. dispersion with the other the latter may have Ejectment. Cute against him to recover posses. 3 Ba 219 1 Brit 109 1 Ean 358 2 Bl 194 3 Wils 118 Same rule as to Joint tenants.

But there must be an actual ouster, dem. the poss. of one is the poss. of both, sole poss. & receipt of the whole profits are not suff. 3 Ba 119 Ed. 392 7 Mod 39 Dk 404 737 50 830 716 8 Mod 109 Comth. 112 Hun 331 9 Ves 180 1 Ead 368.

There must be an actual forcible ouster proved, sole poss. of one tent. in Com. can never amount to evidence of actual ouster. But a sole & secure poss. by one is suff. Ev. Poss. by one who denies the other's title, here the Jury may presume actual ouster. 1 Brit 243 373 Cowp 217 14 Vin 512 2 Bl 194 Ehen.

Great length of sole & quiet poss. is suff. evidence to the Jury that the poss. is adverse Cowp 217 3 Burr 1895 Dk 312 12 Mod 658

Confession by Deft. in Ejectment of lease entry & ouster is suff. to prevent a nonsuit, it may go to the Jury. 3 Ba 219 3 Burr 1895 Esp 413 Bull 109.

After such recovery in Ejectment the tent. dispersed may have the poss. for mense fed its effects is incident to the recovery & is virtually an action of dower. 8 Wils 318

The St. limitation does not run against one tent. in Com. out of poss. except in case of actual ouster for if no ouster the poss. is not adverse Cowp 217.

How far a tent. out of poss. may avoid himself ouster or not vide

Estates in Common

1 Burr 111 117 Co E 303

These remedies of tenants in Comm. extend only to tenancies in Comm. of things real or seising of the realty Litt. p. 322

If a chattel personal is owned in Comm. & one takes the sole poss. the other's only remedy is by re-seising it when he can – Doctrine of Joint tenants – Litt. p. 323 3 Bac 219 1 Inst 200 –

Tenancy in Comm. may be destroyed by partition – By uniting all the title & interests in one tenant – It is then an estate in severalty – 2 Bl 104 –

Sheriff may take & sell the interest of one of several partners for his individual debt & in so doing may take possn. & remove the whole property & deliver the whole to the purchaser 24 Wend 289 2 Vern. R 120 10 do 115 12 do 186 but if he sells the interest of the other partners the being one ground of action for the tenants against such sheriff 2 Litt R 48 & n. 15 Ill p 82

An action of trover will lie by one tent. in common agt. his co-tenant for the destruction of a chattel or for its loss whilst under his management. So if one sell the chattel trover will lie by the other agt. him 3 Johns 179. see wd 4 East 121 126 128 1 Saunt 241 8 T R 145 post 959 961

A tenant in common who takes a lease of his co-tenant of his moiety for a term at a specified rent & continues in poss. after the expiration of the term will not be considered as holding over under the lease & therefore in assumpsit for use & occupation without evidence of such fact the presumption is that he is in possession in his own right as tenant in common 10 Mew 353 8 Conen 304

To support this action there must exist a right of posn as well as property 2 Saund. 176 & 8 R. 9.

This action not to be extended 14 C & L 444 So that property attach'd by foreign attachmt. & suffered to remain in the hands of garnishee. Trover cannot be sustain'd against such attaching creditor altho, the goods did not belong to the dft. in such process. the state of the property not being changed as in 6 East 538 6 Mod 212 where it was held that taking an assignmt. of property in a common law such assignmt. was not valid to transfer the property

Attaching property where it is not removed is not a conversion 14 Wend 203.204

This action originally lay only in cases where one found &c refused to deliver on demand but converted them to his own use. Hence called trover & conversion - action now lies in many other cases 3 Bl 152 5 Ba 256

This action is derived from 13 Eac. 1. 3 Rees 584 &c 2 Inst 89 243 391

It now lies by fiction against one who in any manner poss. of the personal goods of another pulls, destroys, or meddles with them without consent or right or wrongfully refuses to deliver them on demand 3 Bl 153 Rees 33 Cro E 781 5 Ba 256

So it lies against one who tortiously takes the goods of another 5 Ba 257 Cro E 824 Cro 330 / Sed dub. Esp 589 / Mod 31 Hob 128.

The first instance of this action in its present form was in the reign of Eab the actions of a similar nature had been brot in the reign of H8. 4 Rees 226 384

The fact of finding is now immaterial - Conversion is the gist - finding is generally stated in Eng but not always in Eng or here the manner of obtaining poss. is but inducement - finding not traversable. Esp 589 Bull 33 5 Ba 275 2 Bulst 313

Other superseded Detinue by reason of the expertness required in assessing & recovery of mere wages of land / 3 Bl 153 /

Gen. definition of a Conversion - is wrongful assuming to exercise of the goods of another as if they were one's own 5 Ba 257 6 Mod 212 2 Bulst 280 1 Sid 264 - 2 Saund 47 f.

Trover

The Detinue petition is always supposed to have detained prop.ty lawfully - but the action lies as well for repair where the original prop.ty was lawful as where tortious the gist being conversion which may consist of either 1. In an unlawful taking - 2. In an unlawful user - 3 An unlawful detainer - The evidence of conversion in these cases is diff.t / 5 Ba 255 Cro E 50 Burr 31 / there must be a misfeasance to constitute a conversion Esp 590 5 Ba 288 269 Sel 655 1 Roll 6 infra

1. A tortious taking is itself a conversion in law / Esp 580 80 5 Ba 257 / Bac 264 2 Wil 205 / No demand or any thing of the kind is necessary / Esp 580 3 Wils 146 / Trespass is common 5 Burr 2657 Bac 443 -

2 Unlawful user - This supposes prop.ty bailed. by using a thing found &c. / 5 Ba 257 1 Com 221 Cro E 210 / This is an assuming to dis/pose of the goods of another as if they were his own / 5 Bu 257. While the taking is not tortious there must be some evidence of an actual conversion as in the last & following examples. Esp 580

Missing a thing entrusted to one's care found &c. is an unlawful use & so a conversion / 1 Com 221 / Esp 6 Carries of a box of jewells breaks it open or sells it 2 Sel 655 2 Butt 312 2 Wil 53 aug

So throwing paper found into the water. Cro E 210 3 Wil 153.

If bailee of goods destroy them Trespass it is said is maintained against him / 1 Butt 37 5 Co 13 2 Roll 553 1 Com 581 Mo 218 / Bailment is extinguished.

So drawing part of a cask of wine & filling it with water is a

Deft had in his posn a border of Pfs which he refused to restore on demand & afterward before suing the writ he tendered it to Pf by notifying him that he might take it away at any time held no conversion 24 C.L. 269

Jurors will not lie for fixtures attached to a house of which def is in posn as mortgagee & refuses to deliver the fixtures on demand 39 C.L. 61 – whether fixtures are goods & chattels vid 4 Bum & Ald. 206

Can an incorporated company be guilty of a misnomer by the act of its agents ~~[illegible]~~ servants. it can 14 Q.B. 159 3 P.W. 427 14 East 6

30 L.J. 44 That if Butler drew off & use a part of a cask of wine without owners knowledge did not a misnomer of the whole cask

10 Co 56
2 Saund 47 d

To drawing part of a cask of wine & filling it with water is a

conversion of the whole / Esp 581 1 Com 221 Stra 575 / Ilsi in an apprentice &c. Carter Cro E 219 2 Saund 47 f 1 Sid 164 Mod 212 Bull. 44

But negligent custody of a thing is not an unlawful use, Esp 580 590 / Not a misfeasance supra / Hob 131 8 Co 146 b / so no conversion. Eq. Finder of cloth suffers it to be motte eaten / Cro E 219 3 Ba 258 P 243 Hob 18 Sal 655 143 1 Roll 2 b 3 Burr 2827 / Special action on the case lies in case of a finder supra / Esp 591 Sal 655 Bl 804 Pow E 252 Jones, Bailmt. 48 / so against the common carrier Sal 655 Esp 581 Z 277

But if carrier lose the goods Trover does not lie Sal 655 143 Supra

If the unlawful use consist in selling the property Trover Affm. is convenient to recover the money sold for on account bond & received. Bull 131 Bank 140 2 Str 1114 P 387 B. 694.

3 Unlawful detainer is a conversion. So if Deft. on wrongful refusal to deliver on demand. If indeed there has been an actual conversion only, might a demand & refusal are not necessary to the right of action tho the proof was lawful. Esp 589 Ibid 264.

But a refusal to deliver on demand is not strictly a conversion or unlawful detainer / Sal 655 Burr 2827 / 24 Not suff. evidence of ownership accompanying the demand. / Esp 590 2 Bulst 312 Bank 52 / Bailee Deft. may have hold or lien on the property 2 Shaw 161 B. K. 752 Esp 582 2 Burr 933 2221 in 1 Esp C 83. 115 2 Bos 464 2 Bulst 312

Demand & refusal therefore are only evidence of a conversion or unlawful detainer & that too only prima facie evidence / Esp 590 1 Roll 131 3 B 153 2 Shaw 170 / Hob 187 10 Co 56 Burr 2827 1243 /

Trover

Denied in Bellew 2 112 Dissented to the conversion Mo 450 cite Cowp 524

Mere if the Jury find only detinuit & refusal the Court cannot direct for Pl. Esp 524 Hoff 131 10 Co 56 cid. Co 2 17 105 Cand 48 Burr 1643

A finder of goods has no lien on them for his expense & trouble - cannot justify a retention v. Ch 254 Bl 2 117 cite Bridm.

If one having the goods of another put them into the hands of a third person against the command of the owner it is a conversion Co 581 4 Bl 260 Bridgm. 4 Bl 260 2 Saun. 47 f

A tenant is liable for a conversion by himself the to his landlord's use & by his landlord's direction Esp 580 6 Mod 328 Stra 813 1 Burr 222 Brid 47 cid 2 Rolle 242.

A timber lying on the land A asked leave to take it & refused B was holden not guilty of a conversion nor intermeddling - or misfeasance 5 Bur 257 2 Ld Raym 310 2 Rolle 245 cite 5 Bur 1 8 2 Ch Ca 257

If goods accidentally in the hands not the rest in the hat in order to answer a particular purpose for the which cannot be answered may recover them after conversion Bl 2 117 405

Suppose A finds the goods - A claims them merely on a request to deliver them & recover the value to them was A refuse his property. Can recover? Not analogy to the case of Administrator reported Bl 2 175 2 Bur 11 1 Ch Ca 256 Strange 1 Salk 41 cite Bridm.

It is not necessary for Pl to have had the absolute property or possession of the thing the Bailee may maintain the action against a stran

Where goods were replevied to Pl before ~~[illegible]~~ [illegible], & then Pl ~~[illegible]~~ proceeded for damages occasioned by the conversion it was held that there being no special damage stated in decl.n no recovery could be had for such damages as were not necessarily incident to the taking & to rent paid for the premises on which the goods were detained during the conversion 39 C.L 347 vid 4 TR 364 3 Burr 1364

But the finder of a Lottery ticket cannot recover the prize drawn to it – he having neither the posn – or right of posn – to the money 5 Maud[1] – 404 and also 1 Esp 105.6

Said in 5 Hill 119. that where bailee conveys the property bailed to the realty & then sells the realty to one without notice bailor cannot reclaim the property but has only remedy in against bailee

person — he having the gen.l property. 3 Bu 261 2 Roll 569 1 Sid 438 Latch 214 post —

So bailee having a special property may sue trespass in all cases maintain the action against a stranger 1 Bos 14 Peake 40 3 Esp 140 1 Com 218 1 Roll 4. 652 5 Bu 1653 2 Sa Mo 345 Sal 143 Esp 577 Selled 31. vide Bailment.

So a Sheriff who has taken goods in exn. may maintain it — 1 Sa 282 Bull 33 2 Saund 47 vide Sheriff — 2. 199 n 6 Johns R 195 1 Lowen 322 —

So Lessee for years of a house taken down may have trover for the timber against a stranger — special property. Bull 33 Esp 577. vide Lessee.

So prop.y alone gives a right to maintain the action against all but the rightful owner — Esp. when one finds goods — for this gives a right of property which will support this action against third persons. Esp 573 1 Com 219 Stra 505 Bull 33 Stra 777 — vide Cro E 819 5 Co 24 3 Lev 332 2 Saund 47 vide Bailment. 5 Mod 412.

Mod 6

But the prop.y must be acquired legally or under claim & colour of right for if gained without colour of right it gives no special property as against strangers — 3 Lev 338 2 Saund 47 —

So a right of prop.y is suff.t evidence Deft having goods of P. was obliged to deliver them to Pltff P. creditor. action lies Esp 576 1 Bulst 68 1 Com 219 1 Bu 242 1 Str 480 1 Roll 606 — 3 Keb 1 the Pltff never had prop.y 2 Saund 47 n a Latch 214 7 Mo 13 1 Bos 44

But a property of some kind is necessary for a plaintiff when he has sent an order for goods to be delivered to his servant & the

bailees delivered them to the servants but action lay not against the host in favor of the purchaser for no property vested in him for want of delivery. Sal 18 3 Mod 186 Esp 576 Bull 35

Semble they had been delivered to Pltff servant. Bull 35

Unverified bankrupts may prove it against a stranger. Bac 44 Peak E 140 3 Esp E 140 Cowp 569.

Formerly an Ex.r de vastavit not maintain the action for a conversion in testator's lifetime - Now he may by the Ex. of 4 & 5 Ann c. de asportatis 2 Bac 139 Esp 578 1 Com 210 Cro E 577 Alex 60 Willes 168.

Holden that an assumpsit of conversion in testator's lifetime is substituted by proof of taking in his life time & suing afterwards for the time of suing lay in Deft's knowledge - for what then? / 1 Com 221 Esp 589 Hob 60 / Was not the taking tortious? / Esp 579 / Vent 250 / The Court considered the conversion complete in testator's life time.

Bailee's right is said to be founded on his own liability to bailor - i.e. if so at all semb. on the possibility of his being liable & this always exists 1 Bac 249 5 Mod 164 1 Salk 60 3 Lev 80 1 Bac 262 1 Saund 89 1 Sid 438 n. ed. Bailm.

Doubted in the case of a depositary / 5 Bac 104. 3 T R. not the special property which he has suffts. 1 Com. Bailm. 112 / sum of bailing sufficient only suffts. besides he may be liable the no bailee is liable at all events - post tid Bailm.

One tenant in Com. joint tenancy cannot maintain this action agt. his compn. for a thing still in his posn. / 2 Saund 47 f. 1 Salk 200 1 Sal 290 Bull 34 1 Str 654 / Saun if he destroy it 1 Salk 200 Bull 34 35 1 Saund 291 g. fa

Eqks. even tho he locks up the property & claims to be sole owner - there must be a lon-sale or destruction thereof 7 Mod 449 2 Johns 468 3 Ch 175 1 Vernon 241

Ex - one cuts up a whale & turns it into oil this is not a suffn. destruction - locking up a house &c

In trover by the special against the gen'l property man
Pff can only recover the value of his special interest
8 Mass 447 7 Cowen 670 681 n

If after verdict satisfaction is made in whole or part the
court will grant relief on motion 25 Eng. 17

If one delivers the goods of A to B the bailee by delivering them back to bailor exonerates himself from Co. demand & mis-delivery is effectual to bar an action by Co. even if the delivery back is pending the suit / 1 Ba 257. 42 1 R. 607 Ed 1 Ba 137. / id Bailment. / Is plaintiff knowing the property belonged to defendant entitled to claim in not the evidence of an unlawful detainer?

Recovery by bailor acts to the bailee of his action for the full value & vice versa 13 Co 69 & Ba 165 2 Ld 1 Ld 5 69. Bailment.

So the bailee by suing the wrongdoer bars acts to the bailor of his action & comm. commencing an action attaches a right of recovery to if bailor afterwards bailee is entitled of his action of Trover for the full value the he may have an action for his special damages. Analogous to appeal of robbery by villator or tenant & he who begins first 3 Ba & 69 Details 127 id Bailment.

Bailee by suing the wrongdoer discharges the bailee. He elects his remedy. If bailee recover first he makes himself liable to bailor. Found in 13 Co 69 / that he who has the special property shall have trespass or Trover against him who has the general property / 1 Ld 12 - / It is holden contra by some & that the bailee may have a special action on the case to recover special damages / 3 Ba 165 266 / by trespass or Trover against bailor. The action is not for the loss of the property but of the use of it or of bailee's special interest the value of the property is not even prima facie evidence of the rule of damages id. Bailment.

Trover

Returning the goods to Pff. after a conversion does not ~~and~~ his right of recovery mitigates damages only. Esp 581 6 Bac 266 Bellew 212 Croke 148 1 Roll 221 1 Ro 115 3 Bac 902 6 Mod 306

But when the conversion consists in a tortious taking if Deft. delivers it on demand no damages for taking it 1 Burr 31.

Recovery in Trover vests the property converted in Deft. except when it has been returned. Esp 593 1 Roll 115 2 Bac 1078 5 Bac 257.

A former recovery against a stranger is a good bar to the action Esp 593 Croke 573 / There can be but one recovery Bac 1078 Esp 593.

So recovery in Ind. Cpt. the property having been sold is a bar 5 Bac 280 8 Ro. 1207. So in Replevin when innuendo. Esp 593.

Against whom — Wrongful taker — Lawful finder — So servant sute.

Gen. rule. The owner of property may in Eng. maintain Trover not only against the first but any subsequent holder even a bona fide purchaser / Roll 115 / Ex. Service sell the goods / Cro 8 Esp 595 Ba 283 1 Leon 158 1 Bac 25 Fr 261 263 / Where the sale was not in market overt so if the sale in market overt merely void. 2 Bl 450 Esp 595 1 Leon 158.

Exception so far as relates to others than first taker in case of money & bills of exchange — Prom. note / but these can be trod sued against the first taker by reason of currency when they have been passed over to a third person warrant of being 1 Burr

One tenant in common cannot maintain trover agt. his co-tenant unless the latter have destroy. the property 1 Saund 291 1 Bro 170 or have sold it 8 Mend 1444 9 Co 339 9 Cowen 230 3 Johns 195 5 Co 101

A lies agt. any person who was a party to the conversion tho the goods were actually converted by another – Eg A indemnifies B for converting the goods of C – A is liable – 2 Saund 47 i – Bull 41

It lies for property tendered upon a note in form of the promissory letter he did not accept at the time Rock 55 by

If goods are wrongfully sold on a pr. no title passes to the purchaser & trover may be sustained against him for them 16 John 159. 1 Burr 32 -

Where deft under pretence of being an officer obtained property from Pff & abs on agreement that ~~they~~ it should be disposed of in payment of a debt due it was holden that trover could be sustained for the property & that the agreement was not binding 25 E L 289

Owner of a Bill or note pass whom it has been stolen & put in circulation by a forged indorsement may have recovered against the holder 32 E.L. 96. qu if there have been negligence on his part 7 Bing 254 6 East 25 4 T R 28 2 Camp 7 3 T R 127

452.7 Salk 126 Str 38 / Case in Burr 1 Bl. / a bank note stolen & paid away for valuable consideration. Esp 580 30 Bl. R. 1183 Doug 611.

For what? Personal chattels in gen.

His action lies for choses in action of any kind the only evidence of property & the date need not be alleged / Esp 588 Cro E 190 1 Bro 262 Hob 210 Cro J 637 1 Rolls 520 1 Roll 125 Cowp 117 Esp 543 Salk 130 283 Bl 2 344 708 / vid. Cro 623 that it lies not. So for title deeds &c.

In gen. it does not lie for animals ferae naturae / quid confined & valuable / 4 Bl 235 / semi reclaimed 1 Com 219 1 Rolls. vid. 4 Bl 235 3 Ba 263 B.N.P. 86 Hob 283 Cro E 125

It lies for tame animals. Ex. Dogs, Hob. 283 So in some cases not being reclaimed being merchandise & valuable. Ex. Monkeys &c Cro J 262 5 Ba 264 1 Com 219.

It does not lie for a negro slave in Ct. or Eng 5 Ba 263 2 Ld 146 1272 Carth 397 3 Lev 336 Ld 210 Contra 3 Mod 785.

It lies not for the conversion of a record for it is not personal property nullius bona. Terms of the copy of a record 5 Ba 264 Hob 111 Esp 542.

It has been holden that it lies not for money unless it is in a bag &c that it might be identified as in Detinue Cro E 638. 61 / In late cases it has been holden that as the object is not to recover in specie but damages only it does lie for money

Trover

this in mutatis mutandis 5 Bac 264 1 Com 214 1 Roll 3 Cro E 89 818 41

If feme covert lose the husband's money at play, trover lies by husband. 5 Bac. 264 1 Sid 122 1 Bull 33.

Where goods are pawned pawnor may maintain trover after tender of the money. 5 Bac 264 Cro J 244 Esp 590 Bull 72 4 Co 83 Dr & Ld 91 b 4 Com 238 Sal 522 1 Com 120.

If pawned on an unusual consideration pawnor cannot maintain trover till he has tendered the money & demd. the interest for the future is void, not to enforce but to be relieved against the contract & trover is an equitable action. 1 Ld Ray 338.

A parol gift of goods without some act of delivery does not transfer the property & the donor will lie in such cases against donee if he takes posn. / Esp 577 1 Bac 230 2 Leon 30 / qu. without demand? Held not the gift by parol be a license

But delivering the key of the room where the goods are kept to donee is suffn. Str 955 nd. 1 Ld Ray 192.

One tenant in comn or joint tenant of a chattel cannot maintain this action against his companion a damage taken of it on "not guilty" / Esp 586 Sal 290 1 Ray 301 Comp 450 5 Bac 280 1 Ld 658 / Posn of one &c. Security if be destroyed / Esp 586 1 Brut 200 1 Ld 363 8 Bull 34 / If lost by one only against a stranger plea in abatement Sal 290 1 Brut 7 Sec 113 Cro E 344 Esp 1111 Sell p 323 Stra 820 Comp 450 Dyer 76 a.

If there have been no illegal assumption of property trover will not lie for a mere wrongful possession 1 Cts Pl 154. Ex. goods delivd to a carrier who loses them by negligence & altho, he neglect to deliver them on demand proof of such loss is no answer to this action with Defs. - no conversion

So if an inn-keeper must show actual conversion
4 Mand 547 - 4 Mand 613

A, mortgaged B. his house & sold C. the fixtures. A went into posn. of the house & refused to deliver the fixtures to C. who bro't trover agt. A held not to lie 29 Eng L 60
2 Bn & Cr 16. vid 2 Bann & Ald 165 4 do 206

[illegible] 130 [illegible] / price & [illegible] / F. v. B 88 / not [illegible] according

Trover for goods taken — proof was taken upon an agt. v. Pltff & stated in satisfaction of it but the agt. had expired when the levy was made — held to go in mitigation of damages, Gilles 20 Prescott v Wright —

It should regularly state that Pltff. was prop. of the goods or of his own proper goods & that they came to Defts hands by finding — omission of these words cured by verdict 2 Saund. 74 & Moor 691 Hand v Sable 244

£340
200

A. passport of Bs receipt for goods consigned it to Pltff with an order on C to whom the goods were consigned for their delivery to Pltff. Pltff presented the order to C. before the arrival of the goods who promised to deliver them on their arrival held that Pltff might maintain trover on refusal after the arrival 25 C & P 115. claimed that a promissory on the promise was the only remedy as 2 Camp 243. 344. 2 B & C 540 7 Bing 339 cited

£340

£. 333.

Seizing a thing from the freehold is not a conversion / 4 Ba 257 / Ex. taking a door from its place & carrying it away / Cro J 129 / but if the warrant. is "profit" as of his own goods trespass is maintained after verdict. Cro J 129 /

But taking a thing already received is a conversion. Noy 125 3 Ba 257

Throwing goods overboard to save a ship is no conversion is no conversion 4 Ba 258 2 Bulst 280 /

Declaration

This must state a place or it is ill in substance. Esp 588 Cro E 78 qu. 2 Sk 30 / gent. demurrer - vid. Rear 88.

Declar. in trover ought to shew property in Pl. but stating "profit" as of his own goods" is suff. / Allen 69 Hard 111 1 Com 222 4 Ba 201 vide. 2 Lev. 57 Stra. 1028 / Demand & refusal not necessary to state.

Time of conversion must be averred. Esp 588 1 Vent 133 Cro J 128 / in one case for the omission judg. was arrested / 1 Com 224 Cro D 97 - / where the time of conversion was laid before the trover the "afterwards converted" was holden suff. & the "to wit" taken qu. as to the amount of damg. 3 Bl 304 / Castle 389 Cro J 128 4 Ba 316.

The thing must be described with convenient certainty - formerly with great nicety "divers books" insuff. / Vent. 114 3 Lev 1 Lev. 301 Esp 587 Sk 288 2 Sen 175 Sk 654 / Bull. 37 Stra 809 / as to the necessity of alleging the value of the goods vid. 4 Ba 175 Cro J 130 4 / price & value / F.N.B 138 / not necessary according

Trover.

to Esp 558 Cro J 148 qu Esp 407 2 Sa 430 3 Bu 2750

Said that there are only two good pleas in trover gent. issue & release / Esp 502 1 Ther 203 5 Bu 2786 / others have been allowed Yelv. 198 1 Show 146 Cro J 73 Show 1078 Salk 654 ind. Show 60

But a justification may be given in evidence under the gent. issue / Esp 593 Bull 48

St. Limitations in Ct. does not run against trover St. Ct. qu when connected with trespass? qu

In Trover the effect of the suit is to recover the thing demanded Pff shall have full cost altho the jury found special damages under 40 shillings 1 Roll 130

Decided by S.C. K.B. July 1817 that the value of the property & interest is the rule of damages.

Trover for 10 pair of cutcanks valeric certain enough 2 Saund 73.74 b 12 / suff if the goods are described with according to com. acceptation / 2 Str 13 19 11 Mod 66 / Ef two packs of of hemp" without setting out the weight or quantity / Str 991 1 Mod 289 1 Sa 289 / "6 parcels of lead 1 Rent 106 / for a "library of Books" without setting out what they were 1 Rent 114 - "2 pieces of cloth" Sty 419 2 Show 315 Skinn. 142 1 Lev 303 Str 191 192 / for if the jury can understand the goods it is suff 2 Saund 74 a n1

No special plea is allowable unless it be one that admits Plaintiff once had cause of action
3 Hill 87 19 Wend 463

Recovery in trover & actual satisfaction changes the property. Same not. Same if judgt. has been obtained against A. & he has been committed in ex. & no actual satisfaction it is no bar to an action against B for converting the same propty. 8 Cowen 43 6 Johns 168

If the declaration avers that all the goods were the Ffs. can he recover unless he prove them all title Nisi 25 Ed 324

Riding after a person & alleging him to run away to avoid personal injury is an assault 14 6 L 355

Assault and Battery

Assault is an attempt or offer to do a corporal hurt to another by force without touching. Ex Shaking a weapon or fist in a threatening manner. Com Batt. C.D. 1 Ba 154 3 Bl 120 Esp 312 Bull 13.

So presenting a gun 2 Roll 545 1 Vent 250 1 Hawk. 133 / any unwarrantable setting upon a person by an offer &c. to hurt &c. / Finch L. 202 / this is an inchoate violence & amounts to injury / 3 Bl 120 3 Keene 85. / though no actual damage

But a gesture attending an attempt to an assault may be explained by words so as to fall short of an assault / 1 Ba 154 Ex. he lays his hand upon his sword & says "if it were not a fair time" &c. for the intention must operate with the act to constitute an assault / Tidd 3 Esp 312 10 Mod 18 2 Rol. 545. /

Words alone then cannot constitute an assault - contrary dicta contra / 1 Ba 154 1 Hawk 133 2 Roll 545 1 Com 590 / the threat of bodily hurt producing actual inconvenience is an injury - Ex - threatening one, lying off. 3 Bl 120 post

Battery consists in the actual commission of violence upon the person of another / Esp 312 / the least degree of it done in an angry spiteful manner is a battery / 1 Ba 154 Tidd 149 72 1 Com 589 / 1 Hawk 134 / Ex Spitting in one's face - treading on the toe of another &c / 3 Bl 120 /

A battery is not of course unlawful for it may be justified. 3 Bl 120 Dal 407

Every battery includes an assault - the proof of a battery will support a charge of assault & battery. 1 Ba 154 1 Hawk 134 Pet 589

Assault and Battery

Menaces of bodily hurt thro not amounting to an Assault / for words alone cannot constitute an assault pente / are in some cases actionable injuries when they occasion an inconvenience they are actionable otherwise not / 3 Bl 120 Finch 202 Com Batty U. V. 1 Com 590 2 Roll 545 2 Roll / The action is tres fac si et armis / 3 Bl 120 2 Roll 545 / for it can include violence –

In Batty the injury must be immediate – but not necessary to a Batty that the injury should be the instantaneous of the act of the wrongdoer – suff. if produced by a connected train of effects – In gen. any wanton act by which one causes a Batty supports the action q. qu 1 Vent 293 & 9 / Dest. throw a squib which eventually put out the eye. 3 Lev 103 3 Bl 893 Stra 634.

So if one further another wantonly or carelessly against a third person the action lies against the first. Esp 313 1 Ball 16

If horse taking a sudden fright runs against a person the rider is not liable – not his act – But if a third person strikes the horse he would be liable for all consequential injury / Esp 313 4 Mod 405 Esp 24 / 1 Com 590 Sal 637 / Ball 16 there he is liable in case qu. Sal 637 ung.

When one receives a bodily hurt from an act to which he consented he may sometimes have an action & in other it is said not / Esp 313 / Rule – If the act consented to was legal he has no remedy / Esp. Hunt by plunging at angels – no action – it promotes courage / 1 Bar 154 / If hurt by losing consented to he has an action for losing is unlawful / Ball 16 2 Bar 174 / & consent could not make it lawful & "volenti non fit injuria" does not apply – consent void – / qu. be not tolle particeps criminis?

Assault and Battery

To correcting to be beaten does not justify the beating / Esp 313 Comb 118 Bull. N.P. / qu. for the Civil action? / but that the injury has suffered in an unusable context or wrestling is a good defence - comment good - Lewis Pl. 175 -

If one defending himself accidentally hurt another behind him he is liable to this action. Blk 896 SR 468

Malicious intent is not necessary to subject to the action of trespass vi et armis, for a lunatic is liable to it / Fitch 13 110 Dany 640 Esp 399 Hob 134 / civiliter the not criminaliter / 1 Tout. 81 /

Gen. rule that in cases arising ex delicto innocence of intention excuses / Dany 649 / not universal. 1 Com 204 Bro C. 14.

But how far accident will excuse a voluntary trespass has been a question of some difficulty - according 1 Tout. 81 it is suff to make one liable that he has been the physical cause of the damage - this is too broad a rule for it would not admit even of inevitable accident or unavoidance - If the injury happen by the fault of the party injured excused - Hob 134

It is said that "inevitable accident" or "inevitable necessity" only shall excuse. Hob 134 1 Com 589 Cull. 35 2 Roll 548 3 Bulst 377 Blk 896 3 Bulst 110 Stra 596 1 Tout. 81

Meaning of "inevitable" what? That the accident should be physically unavoidable? If so the case in Bull. 16 seems not to be good where a distinction is taken between wantonly pushing a man against another & accidentally to keep him from the latter the accident is not physically

If one privileged from arrest omit to give notice to the officer of such privilege he cannot have trespass so if he resides within the limit of a local jurisdict^n & omit to give notice of his right 11 C & L 41 8 East 113

unavoidable. And in Hob. 134 the Court the Mary are the word "inevitable" argue on the ground of neglect / 1 Ba 154 Esp 313 83 / Equiv if utterly without default Hob. 134

Yet if one in defending himself strike another behind he is liable. 1 Bl R 896 King 467 Cite.

Bull. 16 supposes that if a horse used to run away with the rider takes, takes or frights running injures another the rider would be liable on the ground of neglect & yet the immediate injury would seem as peculiarly inevitable as if the horse were not addicted to running away. But here the remedy would be sue for neglect - not the rider's act - most of the examples given suppose some neglect. / Vent 295 1 R. 467 / In the case of working a gun there was neglect / 1 Tra 505 Bun 2092 Esp 383 / So where a chimney flues upon his land 2 H. Bl 257 8.

The rule is clearly that where the injury is inevitable the Deft. is acquitted / Hob 134 1 Bl R 896 3 Burr 377. / Ex. one taken with the apoplexy falls against another - the injury cannot be said to be inevitable where the act causing it is voluntary i.e. where the act is not the effect of a cause above the agent's control - But still / Cite / there is no liability if the party injured is himself the faulty cause

In other cases according to some opinions if the act causing the damage is lawful & the agent is guilty of no neglect - no want of care, he is excused / Esp 509 Bull 16 Esp 317 13 / Ex. Hopping a drunken man was first in Bull 16 5 Ba 168 Sed qu. the better opinion seems to be that the injury must

Assault and Battery

le inevitable.

In the case in Burr 2092 of a deer killed by Defts dog Defts would not be considered as the agent nor the act his unless the injury was voluntary on his part & where the injury is unlawful the author of it is liable undoubtedly - But where the act causing the damage is unlawful the author is in some way either in trespass or case / liable at all events whether there is the least neglect or not or the consequence mediate or immediate 1 B & R 895 Sc & 1 B & C 12 Mod 639 1 Vent 295 /

The above rules as to accident &c apply to trespasses in gen.

Defence

Three kinds of defence or denial. Justification - Excuse - & Infraction or not guilty Bull 18.

Assault & Battery is justifiable in many cases / 1 Rolle 339 3 Bl 120 / Effectually being legal, inasmuch as it must one may use violence in case of assault as is necessary to effect the arrest Ep 314 1 Bac 155 1 Hawk 130

But a Battery is not justifiable in this case unless there is actual violence 1 B & R 220 / or an attempt to escape / Hawk 1 c 49 Bull 18 Ep 314 3 Bac 403 Co Ent 95 / the arrest merely will justify an assault only

But a "mollitis manus imponit" in making the arrest is justified the no violence &c Hawk 1 c 49 2 Ld Ray 1515 1 Bac 155 Bull 16 5 C no 355 a

Cro E 2 b 4
2 Inst. 31 b

Stra. 1049
Sp R 234
2 Vent 193
2 Salu. 929

And the party first assaulted cannot sustain his action if the violence he used in repelling the assault could not be justified under the plea of son assault made by the deft. 2 Rand 498 cites an analogous case 1 Ld. R 117 11 Ath. 43 Id 642 1 Bay 351 15 Mass 347. 365

Wall 10 5 Leno 85 Ins

Assault and Battery

Plea of "molliter manus imposuit" is good to the justification of the assault as well as Battery 5 Com 555 Skin. 38) 3 Sen 404 Esp 314 / but not of bruising or wounding 8 Mod 299.

Battery is justifiable on the ground of self defence 1 Bl 120 / as if one strikes me first & may strike him — So an assault by Pltff is sufficient to justify a Battery by Deft. — As if Pltff lifts a weapon / 1 Com 589 Bull N P 18 Esp 315 / Plea non assault demesne —

But there must be a proportionate redress on the assault & Battery by Pltff & that by Deft. — for every assault however small will not justify every battery however great / 11 Mod 43 Bull 18 / & the proportion is a question of evidence — A small blow will not justify a mayhem — Pltff strikes Deft. a sensible immediately amounts & Pltff receives a mayhem Deft is justified / Sal 641 Fid 246 Esp 315 / Semble if Pltff gives a blow slight blow & Deft. in return strikes so as to mayhem —

The plea in this case is "non assault demesne" the first assault proceeded from Pltff & that Deft. struck in self defence. Plead aft. 214 / Esp 315 Sal 642 —

But mayhem it seems is not justified by Pltff aggression unless his act might endanger Deft. life 1 Bl 177 Esp 315 Sal 641 11 Mod 43 / Br member 1 Com 590 —

As to the replication "de injuria" &c see 1 Bos & Pul 88 & 66 —

If Pltff was the blameable cause of the battery / tho he did not strike or threaten to strike / Deft is justified in some cases as where Pltff tilted the seat on which Deft. was sitting

Assault and Battery

& Deft's bit off Pltff's finger. 2 Str 177 Sal 642 / But the mayhem in this case appears to have been justified by Pltff's attempting to gouge Deft according to 11 Mod 43 –

So where Pltff thrust his nose into Deft's eyes & a scuffle ensued Deft justified Esp 316 Cro J 346 –

Parents are justifiable in giving their children reasonable correction – Master his servant – Schoolmaster his scholar – gaoler his prisoner / Esp 315 1 Sid 176 1 Hawk 130 Bull 18 / So also according to some Hunt his wife / 1 Hawk 130 B. N. P. 80. 1 Bac 555 / These relations constitute special justifications –

A man may justify a battery in defence of his wife & so conversely – so a parent & child / Esp 314 Bull 18 2 Str 62 / A servant may justify in defence of his master but so evidence qre. / 3 Bac 568 Esp 314 Bull 18 19 2 Str 62 2 Roll 546 1 Hal. 484 Sal 407 1 Bl 429 / 5 Com 354 Stra 955 that the battery must have been in defence of the wife so to prevent her from being injured – not incidentally. Esp 318 2 Str 262 –

So one may justify a battery in defence of his property forcibly invaded – as by breaking a door – But if there is nothing more than a mere entry into another's close / which implies force in law only / the owner is not justified in a battery without a request to depart Esp 314 Bull 19 Sal 641 1 Hawk 130

In case of entry on lands the battery in pleading must be justified not as a battery but as a malitiam manus Bull 18 Esp 314 2 Str 62 Sal 407 5 Com 355 1 Mod 36 contra 8 Mod 78

Deft in mitigation of damages may give in evidence such provocations as do not amount to a justification / 2 Bos 221 / & Words spoken / But such provocation must have happened at the time of the assault 1 Mss 12. 1 White 114 —

Excuse and Justification

The last rules contemplate the owner of property in possn & relate to his right of defending his possn – but when dispossessed or dispossessed a diffr rule shall obtain thus as to real property not known at C.L.

At C.L one who had a right of possn or entry on lands was allowed to regain possn by force from the disseisor or dispossessor 2 Bac 555 & 1 St 179 & 148

But now by general Eng. St. (the first of which is 5th of Reign &) one may not enter on lands &c of which another is in possn except in a peaceable manner (2 Bac 555 4 St 148 & 179) So too by com St 209

Where Sts contemplate possns which are in some way & in some degree abandoned by the owner – as in case of a lease when the possn is given to lessee & in case of lands &c which the possn is neglected & a tenant – merely taking a given neglect is not an abandonmt so as to exclude the owners right to use force. post.

In case of personal property the owner is not allowed to regain possn by force (3 St 4.5 & Bent 54 2 Roll R 55 2 Roll 5 55) unless feloniously taken – Provocation never justifies a battery tho it may mitigate damages. Hob 6 Esp 317.

A Servt cannot justify a battery in defence of his master's goods 5 Com 354 Ten & 242

Repeated & Battery at diver times cannot be laid with a continuando

If a stranger come in aid of an officer even by his command & the act of the officer is unlawful & A is wounded or his goods when B or his goods ought to be taken he is not justified but if the act of the officer is lawful he is justified altho, the officer may become a trespasser by some impropper circumst Cro E 181 Cro J 446 12 Mod 511 ignorance of the law or unlawfulness of the act of the officer is no excuse for his assistant 6 Mod 140 10 Mend 138

Pffs Plds

/Esp 316/ for an assault is one entire individual act /Comp 828/ vide 3 B/ 212 Set 638.

The offence should be charg. positively & not by way of recital. Les "blames" &c Esp 316 & the 321 - Sem where the writ being set out in the declar. helps the want of a positive assert. 2 Wils 203 Esp 316

For a battery of the wife husb. & wife should join & the injury should be laid ad damnum suum, - for husb. is damaged by expence & cost of suing & the wife is personally injured & the damages would accrue to her /Esp 316 1 Said 387 1 Roll. 782 2 Ld R 1208 / If the Pffs are not husb. & wife it must be pleaded in abatement. Esp 321 the 480

If a battery has been committed against husb. & wife he alone must sue for the injury to himself /Esp 316 2 Ld R. 1208 1 Roll 782 / in Cro 3 Ass that if both join in this case for both batteries & several damages the writ abates, as to the husb. - Esp 316 / after verdict if joint damages just. arrested in toto Esp 316.)

Pff may lay / in aggravation of damages, it is said / many facts for which he could not recover himself - Ex Esp setting his servts. / Esp 317 Set 612 / qu. If it be to aggravate damages, or to shew how enormous the trespass was?

If Deft. plead non assault demesne & the Pff can justify he should plead it - cannot give it in evidence under the gent. replication of the issue in Esp 317 Comb 288

If the Battery has been done by several Pff may bring either a joint or several action Esp 317

Dfts Plds

In Eng. a justification must be pleaded in case of a battery as son assault demesne &c in other cases of trespass. / Esp 317 1 Saund 282

S. 533.

Dalen v. for an assault in seizing & keeping hold of Pff dragging him about striking & forcing him out a field into a strange a pond & there imprisoning him - Plea justifying the assaulting seizing & keeping hold of Pff & pulling & dragging him about held no answer to the entire action v. 27 L.J. 312 - If the subsequent acts were more matter of aggravation consequent on the assault had been the gist of the action Plea wd. have been suff. 3 T.R. 297 1 Ho. Bl. 561. 1 Saund 28 n 3.

S 1654

Dfts Plds

Bull 17 i.e. where Dft on facts shewn is prima facie a trespasser —

But circumstances which attended the transaction / & words spoken at the time tending to create mutiny in Dfts Ships / may be proved in mitigation of damages tho if pleaded they would have been a justification. Esp 317.

If Dft justifies an assault &c he must confess the battery &c or the plea is ill / Esp 318 Sal. 637. / If Plea. Dft have run away cattle in agt his will &c — for this was no battery Ld 402

The genl. replication to a plea of son assault &c is de injuria &c Esp 317 1 Bac 155 5 Com 354

Matter of excuse & inevitable accident may be either pleaded or given in evidence Esp 317 Bull 17 Sal 637 4 Mod 404 —

To the plea of molliter manus &c the Pff may reply de son tort demesne" / which Sent. includes a denial of the justification / or an "outrageous battery" absque hoc molliter &c 5 Com 356 Shinn 381 Lutw. 1436 Com Pl. 3 M. 1b

Pff is not confined in proof to the time laid in the decl.n but may prove any battery / not barred by St. Lim.n / So special pleas must cover all the time — they must be as broad as the decl.n ind 5 Bac 20b 1 Bulst 138 2 Saund 295 Cro E 228 Hob. 104 Ld R 229 Esp 407 321 415 282 Sal 222 1 Brut 283 Cro E 32

Neither Dft traverse as to parcel a subsequ.t time when he pleads a son assault demesne / Sent not / Bull 17 Plead ep.t 443 / for proof of Pffs assault on any day is suff.t — Pff is denied to be guilty of assault —

Also a plea of molliter manus imposuit may justify a more assault it is no answer to a charge of beating, wounding & ill treating Aff 30 John 437 & 2 R 299 Sayer 138

Defts Plea

So the plea should be as broad as the declar. as to the subject matter i.e. should cover the whole injury / Esp. 318 / Ey. If Pff charges assault battery & wounding a plea reaching the battery. & not the wounding is ill / Cro E 268 / son assault & covers the whole grievance / Esp 318 / for the words are that "the Pff made an assault &c & that Deft then & there defended himself & if any damage & hurt has happened &c / Plead Eqt 447 / Semble of motion mainus &c for it does not answer the allegation of wounding § 353

If the justification is founded on the relation of husb. & wife &c the assault &c must be averred to have been made to prevent injury to the wife &c & not by way of revenge / Esp 318 Dyk 62. in 2 Roll 546 Strange 953 / wife cannot plead alone husb. must join in all cases Esp 318 Cro § 239

A former recovery of damages against Deft or another is a good plea in bar / Cro E 30 Esp 319 4 Ib Sal 11 Cro § 73 Bull. 20 Yelt 58 5 Bac 155 / Com 111 / for the uncertain damages are reduced in certainty which takes away &c / 4 Bac 118 / Satisfaction not necessary. Mr Rs reason that in case of torts damages being uncertain Pff might multiply actions from the hope of obtaining more § 488

In case of contracts the sum being certain he has no such inducement if the original Deft is solvent -

The rule holds if even further damages accrue after the first recovery / Esp 319 Sal 11. / for the battery is the gist of the action -

a private person apprehending on suspicion of felony does it at his peril Salw. N.P. 916. 4 Term 34 nor can he apprehend on suspicion & take the party to the place where the felony was committed to ascertain whether he was the felon 2 & C L 399

one in posse may use force to maintain it but being dispossessed he may not require it by force a a breach of the peace 11 Rich 387 8 T R 299 3 John 239

So in trespass generally a former recovery is a bar to all continued trespasses committed before the date of the first writ 2 Roll 320

In this action as in all trespasses if the injury is done by several the Pltff may sue all or any /Esp. 317 & Str 651/ Release to one is a release to all Hob 66 Esp 418

As to separate damages authorities are contradictory. If two or more are doing jointly & are found jointly guilty i.e. each of guilty of all the jury cannot sever the damages / Esp 324 420 & Burr 2790 Barth 19 11 Co 5. Sent 317 Cro S 118/ So two they plead severally Semb.

So if judgt goes against both by default the damages cannot be severed. Esp 420 Stra 422.

If Defts sever in their pleas / Ex. One pleading the general issue - another a justification & the Jury may sever tho the several Defts are supposed to be equally guilty according to Esp 420 2 Stra 1140 79. / Cases contra 1 Co 6.; Bull 20 Cro S 348 Barth 19 - So Cro E 850 Hob 66 9 Co 79 Stra 910 Cro S 384 contra Esp 521 vide 1 Saund 207 n that the damages cannot be severed Burr 2792

But in cases where the damages ought not to be severed Pltff may prevent Deft from arresting judgt or taking error by remitting one aforent & taking judgt for one only - there can be only one aft in those cases / Bull. 20 Barth 19 11 Co 7 / & equ may go only against

the one agt whom the amt was apprd - / Cowtn 20 Bull 20 Burr 207 Cro E 239-243

If Pff will enter a nol. pros. he may take judgt for the greater damages agt both & without Nol. pros - Pff may arrest judgt in these cases if he so elects or he may enter a Nol. Pros - as to one Deft & take judgt agt the other for the one apprd - Bull 20 Cro E 175 Cowtn 19 Hob 70 -

It is said that the Jury may in trespass find one guilty as to one part & another as to another & apprs damages severally & the finding will be good / E. p 420 Cro E 860 / without remittitur / Plea supposed to be the gent. issue / Here they are not found jointly guilty / 11 Co 5 / Semble unless the diff Defts are found guilty / of diff parts / at diff times This qualification is adopted by our S. C. Mard C. Cro E 54 & Bull 20 cases with this qualification & 11 Co 5.7 therefore where the injury is one entire battery the Jury can not sever for the wrong was indivisible -

The rule that if two or one jointly chargd & found jointly guilty i.e. each of the whole damages cannot be severed is adopted in this State - Samson vs Rutledge S. C. Eq. Ch - 1798 Here the Defts - pleaded severally not guilty

If one is compelled to pay the whole - no contribution will lie on Eq - 8 B R 185 Kirby 110

In Eng - it has been holden that a Nol. pros - or nonsuit as to one of several Defts - before judgt against the others discharges

178

978

the other - it operates as a release to all - one - Mod 10.180 Bull 20 Co 19 / Cro J 173. 176 cor - / practise otherwise in Ct - not law now in Eng. 1 Saund 207 3 Bl 511 1 Wils 90 3 Wh 597 Co 19

In Eng - & Ct. the Ct will give Pff leave to strike the name of one of the Defts - out of the declar^n & then improve him as a witness. Rule when the other Defts. wife for his sid ane / Bull 285 2 Ba 287 / Sid 441. Sandon v Wharton - sup - / If no sid ane cert - him he may be sworn - Sens if any at all - he must then be tried before he can testify - the C. may let a verdict go to him be first taken - All causes of action arising ex delicto whether the remedy be trespass or case are saved. 5 Bl 551

The Jury may say from the declar^n & find only a part - Rule common to action of trespass in gen^l - Ef. Guilty of the battery & not of the wounding Ep 421 1 Roll 554 Tr C 39. 34.

Proving now than is injur is idle. If there has been a mayhem the Jury are sized upon the damages at their discretion & the mayhem is charg - in the declar^n if the Judge certifies or reports it - But it must be done in Court Pff must be present when motion to increase is made - founded on the rule that in an appeal of maiming whether mayhem or not is to be tried by the inspection / Ep 322 Dr 176 Leith. 223 3 Bl 332 1 Sid 108 1 Wils 5 / it must be proved to be the same hurt for which damages are given by the Jury. / Bull 21 Ep 322 - / Sc damages increased in case of wounding pt sup / Ep 322 Dr 176 / Sc of attorney's battery / 3 Bl 333 / Manner of wounding must be laid in the declar^n

Damages not increased in these cases if the Judge who heard the cause declares himself satisfied with the verdict Ep 322 1 Wils 5

The Jury cannot give greater damages than are laid / Ep 420 Lev 297 / But if they do Pff may have judt - on remitting the excess / Co Litt 21 1 Co 115 1 Bl 543 4 Ba 256

Every offence & Battery is a public as well as a private wrong / 1 Ba 156 1 Mean 134 3 Bl 121 4th 146 / a punishable by fine & imprisonment / 4 Bl 216 & Co / Penal offence is a distinct offence in itself & the remedy is distinct from that in other offences - Penal may be joined when the civil offence is & penal / Raly 108

Ct fini

John H. Russell. 1849.

Canaan.

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